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code of federal regulations

572-C

Navigation and Navigable Waters

ORIGINAL

COMPLETED

33

PART 200 TO END

Revised as of July 1, 1982

022-003-94816-3

code of federal regulations

Navigation and Navigable Waters

33

PART 200 TO END

Revised as of July 1, 1982

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Cite this Code **CFR**

thus: **33 CFR 203.11**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16..... as of January 1
Title 17 through Title 27..... as of April 1
Title 28 through Title 41..... as of July 1
Title 42 through Title 50..... as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

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Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

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An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

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THIS TITLE

Title 33—NAVIGATION AND NAVIGABLE WATERS is composed of two volumes. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1981. The first volume, Parts 1-199, contains current regulations of the Coast Guard, Department of Transportation. The second volume, Part 200 to end, contains current regulations of the Corps of Engineers, Department of the Army, and the Saint Lawrence Seaway Development Corporation, Department of Transportation.

For this volume, Clarietha T. English was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

Title 33—Navigation and Navigable Waters

(This book contains Part 200 to End)

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(Part 200 to End)

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CROSS REFERENCE: For Research and Development, Laboratory Research and Development and Tests, Work for Others regulations, see 32 CFR Part 555.

ABBREVIATION: The following abbreviation is used in this chapter:
CE=*Corps of Engineers.*

PARTS 200–202—[RESERVED]

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

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AUTHORITY: Pub. L. 84-99 (33 U.S.C. 701n); Pub. L. 93-288.

SOURCE: 43 FR 1434, Jan. 9, 1978, unless otherwise noted.

Subpart A—Introduction

§ 203.11 Purpose.

This regulation prescribes administrative policies, guidance, and operating procedures for natural disaster activities of the Corps of Engineers. These are:

(a) *Flood and coastal storm emergencies* (33 U.S.C. 701n) (69 Stat. 186) (Pub. L. 84-99). Authorized activities include disaster preparedness, advance measures, flood fighting and rescue work, rehabilitation of flood control works damaged or destroyed by flood, protection or repair of federally authorized shore protective works threatened or damaged by coastal storm, and provision of emergency drinking water.

(b) *Disaster relief and assistance* (42 U.S.C. 5121 et. seq.) (88 Stat. 143) (Pub. L. 93-288). This normally consists of technical advice and construction contracting assistance to the Federal Disaster Assistance Administration (FDAA). It encompasses conducting preliminary surveys/estimates of damages, furnishing recommendations and damage survey reports, and performing specific mission assignments requested by FDAA. These mission assignments may include clearance of debris and wreckage; emergency work essential for the protection of life and property; permanent repair, restoration, reconstruction or replacement of public and non-profit facilities; and disaster preparedness.

§ 203.12 Applicability.

This regulation is applicable to Corps of Engineers Divisions and Districts performing or supporting natural disaster assistance and recovery operations. Its provisions are applicable within the 50 States, the District of Columbia, and territories where other Corps statutory authorities apply. The Corps will also provide disaster assistance under Pub. L. 93-288 and Pub. L. 84-99 in Puerto Rico, Virgin Islands, American Samoa, Guam, and the Trust Territories.

§ 203.13 References.

(a) AR 10-5.
(b) Part 502.
(c) ER 10-1-3.
(d) ER 11-2-320.
(e) Part 220.
(f) ER 1150-2-301.

§ 203.14 Implementation.

This regulation will be used as the organization's natural disaster procedures. Supplements required by this regulation (see § 203.32) will cover specific operational information not included in this regulation.

§ 203.15 Reports Control Symbol.

Reports Control Symbol DAEN-CWO-2 is assigned to the flood and disaster reports prescribed in this regulation.

Subpart B—Missions, Authorities, Command Channels, Delegations, and Responsibilities

§ 203.21 Corps of Engineers.

(a) *Mission*—(1) *AR 10-5 and Part 502.* AR 10-5, the regulation which describes the organization and functions of the Corps of Engineers, provides that the Chief of Engineers accomplish his Civil Works responsibilities under the direction and supervision of the Assistant Secretary of Army (Civil Works), in administering the provisions of Pub. L. 84-99 which provides authority for flood emergency activities. Part 502, Disaster Relief, contains Department of the Army policy and responsibilities for operations involving military elements of the Army in disaster relief activities. It specifically identifies the administration of Pub. L. 84-99 as a separate activity under the supervision of the Chief of Engineers. It also establishes the Chief of Engineers' responsibility for providing disaster assistance through use of Division and District Engineer resources when required by imminently serious conditions, as authorized by statutory authorities, or as directed by the FDAA Administrator or Regional Director, under the provisions of Pub. L. 93-288.

(2) *Broad objective.* The Corps must be responsive to the public need, and be prepared to perform in accordance with the national mission. During flood or other emergencies the full ca-

pabilities and authorities of the Corps will be utilized for the common good in order to save human life, prevent immediate human suffering or mitigate property damage. To be prepared for every eventuality, a planned system of timely reports, quick responses, appropriate actions and subsequent documentation must be effectively established, taught, and practiced.

(3) *Mission execution.* Division and District Engineers are responsible for the accomplishment of authorized emergency missions in their jurisdictional areas in accordance with the policies, responsibilities, duties, and functions prescribed in this regulation. They execute their responsibilities through the Emergency Operations Manager (EOM), as outlined in Appendix XX, ER 10-1-3.

(4) *Purpose.* This subpart provides information on the general authorities related to flood control work, delegated authorities, and responsibilities of Office, Chief of Engineers, Division and District Engineers. Paragraphs (d)(2) and (3) of this section provide summaries of the Division and District Engineer's standing obligational authorities for emergency work.

(b) *Authorities*—(1) *Pub. L. 84-99.* An emergency fund is authorized to be expended at the discretion of the Chief of Engineers; for flood emergency preparation; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood; emergency protection of federally authorized hurricane or shore protection projects being threatened; and the repair and restoration of any federally authorized hurricane or shore protective structures damaged or destroyed by wind, wave, or water action of other than an ordinary nature. The law as amended includes for provision of emergency supplies of clean drinking water. A copy of Pub. L. 84-99, as amended, is on page A-1 of this regulation. In general, the emergency fund is replenished annually by Congress based on projections of requirements furnished by OCE. The law further provides that should the emergency fund be depleted, other flood control appropriations may be temporarily used pending a reimbursing appropriation.

(2) *Disaster Relief Act of 1974* (Pub. L. 93-288). The law authorizes Federal assistance to State and local governments in a major disaster or emergency and is supplementary to other Federal authorities.

(3) *Special continuing authorities.* Part 220 of this chapter provides guidance concerning special continuing authorities, which are available to the Chief of Engineers. Authorities relating to flood control follow:

(i) *Snagging and clearing channels for flood control* (sec. 208 of the Flood Control Act approved Sept. 3, 1954) (33 U.S.C. 701g). This authority provides for removal of snags and debris, for channel clearance, and for straightening or other construction to improve natural channels in the interest of flood control ($250,000 project limit).

(ii) *Emergency Bank Protection* (Sec. 14 of the Flood Control Act approved July 24, 1946) (53 U.S.C. 701r). This authority provides for construction, repair, restoration, and modification of emergency streambank and shoreline protection works to prevent damage to highways, bridge approaches, other public works, churches, hospitals, schools, and other nonprofit public services ($250,000 project limit).

(iii) *Small flood control projects not specifically authorized by Congress* (sec. 205 of the Flood Control Act approved in 1948 and associated legislation) (33 U.S.C. 701s). This special continuing authority provides for construction of small flood control projects on an expedited basis subject to each project being complete in itself and meeting other specified criteria ($2,000,000 and $3,000,000 project limit).

(4) *Work for others*—(i) *Work for Federal agencies.* Section 219, Pub. L. 89-298, October 27, 1965 permits the Corps of Engineers to accept orders from other Federal departments and agencies for work or services and to perform all or any part of such work or services by contract (ER 1140-2-302).

(ii) *Work for State and local agencies.* Title III, Intergovernmental Co-

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operation Act of 1968 authority limits Federal agencies to providing in-house technical and specialized services (ER 1140-2-305). Cooperation under the act does not permit performance of contract work as the agent for State and local units of government. Emergency work in support of State and local communities must be limited to that authorized pursuant to Pub. L. 84-99, Pub. L. 93-288, or Part 502.

(c) *Command channels*—(1) *Chief of Engineers.* The Chief of Engineers, under the guidance and supervision of the Army General Staff, has Army Staff responsibility for the management of engineer activities of the Army. His Civil Works responsibilities are accomplished under the supervision of the Secretary of the Army through the Assistant Secretary of the Army for Civil Works (ASA-CWO).

(2) *Army establishment.* With the exception of Civil Works programs, responsibility for Army disaster relief activities has been delegated in Part 502 to the Commanding General, U.S. Army Forces Command (FORSCOM), who has redelegated responsibilities in the Continental U.S. (CONUS), to the Army Commanders (CONUSA). Unified commanders are responsible for the conduct of all foreign disaster relief support activities in response to requests from Department of State and for the conduct of disaster relief operations in Alaska, Hawaii, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territories of the Pacific.

(3) *Command relationships*—(i) *Established liaison.* Division Engineers will define and clarify their command relationships and channels with CONUSA Commanders and FDAA Regional Directors. Relationships between District Engineers and Army Commanders will be in accordance with mutual arrangements developed by the Division Engineers and CONUSA or Unified Commanders concerned. Similar operating relationships will be developed with U.S. Coast Guard and other Federal agencies at the field level as necessary for joint emergency operations.

(ii) *Detail of military resources to division and district engineers.* Military resources supplied to a Division in support of emergency operations and disaster recovery efforts, will be under the operational control of the responsible division or district engineer. However, such division or district engineer's operational control of supporting forces or resources will be limited to disaster operations within the authority of the Chief of Engineers.

(iii) *Detail of Corps of Engineers resources to CONUSA commanders.* Corps of Engineers forces or resources supplied to CONUSA commanders in support of their disaster operations will be under the control of the CONUSA commander concerned.

(iv) *Command of Corps of Engineers resources providing interdivisional assistance.* When resources of other division and districts are used to augment local disaster operations, they will be employed and directed by the local division or district engineer.

(v) *Realignment of Corps activities.* Generally, the established civil works boundaries will be adhered to in defining areas of responsibility. However, should the situation dictate a need for temporary realignment to clarify jurisdictional responsibilities, realignment by mutual agreement of affected division engineers is authorized. When finalized the responsible division engineers will advise HQDA (DAEN-CWO-E), Washington, D.C. 30214, of the action taken.

(d) *Delegations*—(1) *Action in case of imminent seriousness.* Authority is delegated by the Chief of Engineers, under Part 502, for division and district engineers, and other civil works field operating agency commanders, to take independent emergency action to provide necessary assistance under conditions of immediate urgency in the absence of specific statutory authority. Action taken will be as necessitated to save human life, prevent immediate human suffering, or mitigate major property damage or destruction. In such a situation, any available Government resources in their charge may be used by Corps officers or subordinates on their own authority. Except for emergency operations under Pub. L. 84-99 authority, contractors must be engaged by non-Federal public entities, unless and until there is a Presidential declaration making Pub. L. 93-

288 authority applicable and an FDAA mission or request has been assigned.

(2) *Division engineers.* Division engineers are delegated authority as follows:

(i) *Disaster preparedness—Code 910-100.* Transfer of funds up to $5,000 between features within a district's approved program is authorized. NED and POD have $5,000 transfer authority. Specific procedures are contained in ER 11-2-320.

(ii) *Emergency operations—Code 910-200.* No delegated authority, except NED and POD.

(iii) *Rehabilitation—Code 910-300.* (A) Transfer of up to 25 percent of the approved estimated Federal cost of rehabilitation, or $50,000 whichever is less, to an approved project. Specific procedures are contained in ER 11-2-320.

(B) Increase district engineers rehabilitation investigation authority up to $5,000 per project. NED and POD have $5,000 obligational authority per project.

(iv) *Emergency water supplies—Code 910-400.* (A) Increase district engineers investigation authority up to $5,000 per request. NED and POD have $5,000 obligational authority per request.

(B) Approve measures for furnishing emergency supplies of clean drinking water, up to $50,000 per request.

(v) *Advance measures 910-500.* No delegated authority. NED and POD have authority of $2,500 for investigations to determine eligibility of work.

(vi) *Hired labor.* Authorize performance of emergency work by using Government plant or hired labor (see Subpart I of this part).

(vii) *Military support.* Obtain use of military support from CONUSA and unified commanders in emergency operations when the special capabilities of troops, equipment, and aircraft are required. Under Part 502, CONUSA and unified commanders are authorized to make their uncommitted resources available to Corps division engineers conducting emergency operations.

(viii) *Rehabilitation work.* Whenever disaster effects are so widespread and extensive that decentralization of project approval authority is necessary to facilitate the simultaneous rapid progress on many projects, then division engineers may be delegated temporary authority to act for the Chief of Engineers, in authorizing rehabilitation work. This authority may not be redelegated, and is not a continuing authority.

(3) *District engineers.* District engineers are delegated authority under Pub. L. 84-99 in the following areas:

(i) *Disaster preparedness—Code 910-100.* Transfer of up to $1,500 between features within a district's approved disaster preparedness program. Specific procedures are contained in ER 11-2-320.

(ii) *Emergency operations—Code 910-200*—(A) *Field investigations.* Standing obligational authority up to $10,000 per situation or flood event district wide. NED and POD also have $10,000 authority.

(B) *Flood Emergency Operations.* Standing obligational authority up to $100,000 per flood event. NED and POD also have $100,000 authority. A flood event may involve several river basins, but the $100,000 authority is applicable district-wide, regardless of the number of river basins and/or States affected.

(C) *Post-flood reporting.* Standing obligation authority up to $10,000 per flood event, district-wide. NED and POD also have $10,000 authority.

(iii) *Rehabilitation—Code 910-300*—(A) *Rehabilitation-investigations.* Standing obligation authority up to $2,500 per project following a flood event.

(B) Transfer of up to 15 percent of initially approved project estimate, or $10,000 whichever is less, to a rehabilitation project for which an individual cost estimate has been approved. Specific procedures are contained in ER 11-2-320.

(iv) *Emergency water supplies—Code 910-400.* Standing obligational authority up to $2,500 for investigation of each request.

(v) *Advance measures—Code 910-500.* Standing obligational authority up to $2,500 for investigations to determine eligibility of work.

(e) *Responsibilities.* Division and District Engineers have overall responsibility for accomplishing the emer-

gency missions. This includes maintaining an organization ready to respond to emergencies by training of emergency personnel, reviewing funding requests, and appointing an individual to manage the Emergency Operations function. This position is the counterpart to the Chief, Emergency Operations Branch, Construction-Operations Division, OCE, and is required by ER 10-1-3, and the duties are listed in Appendix XX of that regulation.

(1) *OCE emergency operations branch.* The Chief of Engineers responsibilities regarding emergency operations are executed through the Chief of the Emergency Operations Branch, OCE (DAEN-CWO-E).

(2) *Division engineer.* The division engineer's responsibilities regarding emergency operations are executed through the emergency operations manager (EOM) as follows:

(i) *Disaster preparedness—Code 910-100.* (A) Prepares division annual disaster preparedness program request.

(B) Assures that the districts annual disaster preparedness request is complete and appropriate. Approved programs are forwarded with recommendations, to HQDA (DAEN-CWO-E), Washington, D.C. 20314, for necessary action.

(C) Prepares division supplements to Part 203.

(D) Determines requirements for division-wide emergency operations training including conduct of exercises.

(E) Establishes and maintains liaison with CONUSA commanders, FDAA regional directors and other agencies as necessary for effective response.

(ii) *Emergency operations—Code 910-200.* (A) Activates and staffs an emergency operations center (EOC) when deemed necessary.

(B) Aids districts in obtaining personnel, equipment, supplies, and funds during flood fighting or other emergency efforts.

(iii) *Rehabilitation—Code 910-300.* (A) Reviews districts rehabilitation reports to determine if work is applicable under the authority of Pub. L. 84-99 and if appropriate forwards with recommendations to HQDA (DAEN-CWO-E), Washington, D.C. 20314, for necessary action.

(B) Makes periodic field investigations immediately following natural disasters to assess damages and makes site inspections, as required, during and after construction, to ensure that work is being accomplished within the scope of Pub. L. 84-99.

(iv) *Emergency water supplies—Code 910-400.* Reviews district's request to furnish emergency drinking water to determine if the measure is applicable under the authority of Pub. L. 84-99, and as appropriate, approve or forward request to HQDA (DAEN-CWO-E), Washington, D.C. 20314, for necessary action.

(v) *Advance measures—Code 910-500.* (A) Reviews districts advance measures reports to determine if work is applicable under the authority of Pub. L. 84-99 and if appropriate forwards with recommendations to HQDA (DAEN-CWO-E), Washington, D.C. 20314, for necessary action.

(B) Makes periodic field investigations as required of proposed advance measures projects to determine if work is within guidelines established under Pub. L. 84-99.

(vi) *Interdivisional assistance.* Requests interdivisional assistance whenever it is determined that available local and division resources are inadequate to cope with an existing or predicted emergency or a natural disaster recovery mission. Requests for assistance should be kept to a minimum, and personnel temporarily assigned, should be retained no longer than necessary. Assistance requests will be direct communication between the divisions with close coordination between emergency operations manager and personnel offices. HQDA (DAEN-CWO-E), Washington, D.C. 20314, will be kept informed by the requesting division of the progress made in obtaining the needed personnel.

(A) *Information furnished the requestor.* The supporting division will notify the requesting division of the support which can be provided. It will then furnish the supported division a list of the personnel comprising the emergency assistance units or teams, showing their qualifications and positions held.

(B) *Support.* The table below serves as a guide for interdivisional support but is not limited thereto.

Requesting Division and Support Division

New England—NCD, CRD, and NAD.
North Atlantic—ORD, NCD, and NED.
South Atlantic—LMVD and ORD.
Lower Mississippi Valley—SAD, SWD, and MRD
Ohio River—CD, MRD, and LMVD.
North Central—MRD, NAD, and ORD.
Missouri River—NPD, NCD, SWD, and LMVD.
Southwestern—SPD, LMVD, and MRD.
South Pacific—NPD, SWD, and POD.
North Pacific—SPD, MRD, and POD.
Pacific Ocean—SPD and NPD.

(vii) *Coordination with Federal Disaster Assistance Administration.* Coordinates with FDAA regional directors regarding all Corps actions pursuant to Pub. L. 93-288. Accept mission assignments and designate appropriate district for implementation.

(viii) *Coordination with military.* Coordinates with CONUS Army Commanders in disaster preparedness and keeps them informed of any significant emergencies where their assistance may be required.

(3) *District engineer.* District engineers responsibilities regarding emergency operations are executed through the EOM as follows:

(i) *Disaster preparedness—Code 910-100.* (A) Prepares letter report on disaster preparedness program in accordance with ER 11-2-320.

(B) Prepares district annexes to this regulation in preparation for natural disasters.

(C) Develops annual training program for personnel who may be assigned roles in emergency operations.

(D) Assures the inspection of non-Federal flood control works which have received Corps assistance pursuant to Pub. L. 84-99.

(E) Maintains a list of supplies and equipment available for use in a disaster emergency.

(F) Establishes and maintains close liaison with other Federal agencies and non-Federal interests.

(G) Prepares quarterly summary report as required by ER 11-2-320.

(ii) *Emergency operations—Code 910-200.* (A) Activates and staffs an EOC when deemed necessary.

(B) Institutes measures to keep informed of disaster potential and advises Federal and non-Federal interests as appropriate.

(C) Provides non-Federal interests with such information in flood or coastal storm forecasts as is furnished by the National Weather Service (NWS). Provides technical assistance by advising non-Federal interests in their efforts to maintain the integrity of flood control works and federally authorized shore and hurricane protection projects under their jurisdiction. When non-Federal interests have committed their resources, and are unable to cope with the flood or coastal storm situations, directs Corps assistance either by supply of needed materials and equipment or by undertaking Corps flood fighting and rescue operations.

(D) Furnishes to division and OCE situation reports in connection with potential or actual emergency flood control activities under Pub. L. 84-99 and with other natural disasters which involve or may involve action by the Corps of Engineers pursuant to Pub. L. 93-288. The division and HQDA (DAEN-CWO-E), Washington, D.C. 20314, offices will be called immediately to report an emergency potential or incident. An appropriate written report will also be forwarded. The listing of required reports is furnished in § 203.44(b).

(iii) *Rehabilitation—Code 910-300.* (A) When rehabilitation of a flood control or federally authorized hurricane protection works is required, a field investigation must be made to determine if the repair work is within the authority of Pub. L. 84-99. A rehabilitation letter report is submitted to the division for necessary action.

(B) Rehabilitation work should be treated with the same degree of exigency as all other emergency operation activities.

(C) Furnishes to the division a copy of the letter that transfers completed emergency repair work under Pub. L. 84-99 to non-Federal interests as outlined in ER 1150-2-301.

(iv) *Emergency drinking water—Code 910-400.* When a State Governor requests assistance for emergency drinking water, a field investigation

will be made to determine if the assistance requested is within the authority of Pub. L. 84-99 and if applicable, a letter report requesting funds and authority to give assistance will be submitted to the division for necessary action.

(v) *Advance measures—Code 910-500.* When advance measures are requested, a field investigation will be made to determine if the work is within the authority of Pub. L. 84-99. When applicable, a letter report will be submitted to the division for necessary action.

(vi) Responds to FDAA mission assignments through the Division.

§ 203.22 Department of Defense (DOD).

As stated in Part 502, the Secretary of the Army has been designated the DOD executive agent throughout the United States and its territories for military support in disasters, including responsibility for effective use, coordination and control of military resources employed by the Army, Navy, Air Force, and other DOD components. The authority to task appropriate DOD components for resources to conduct disaster relief has been delegated to the Commanding General, FORSCOM (CGFORSCOM). CONUSA commanders are directed to coordinate the military effort with assistance provided by the Corps of Engineers. In major disasters, CONUSA commanders will appoint a DOD military representative to act as the point of contact for military support. A unified commander's authority and responsibility similarly applies to the planning and use of military resources outside CONUS. Acting under DOD instructions, and pursuant to Part 502, the Army has primary responsibility among the military services for provision of disaster relief. It is also responsible for coordinating the disaster activities of the military services. In summary, the DOD can provide the following when appropriate.

(a) *Military support.* (1) Flood fighting assistance.

(2) Emergency shelter.

(3) Search and rescue.

(4) First-aid and emergency hospitalization.

(5) Field sanitation.

(6) Preventive medicine.

(7) Graves registration and mass burial.

(8) Debris removal.

(9) Restoration of utilities and provision of emergency communications.

(10) Mass hysteria control.

(11) Traffic control and maintenance of law and order, with prevention of looting and plundering.

(12) Fire fighting personnel and equipment.

(13) Emergency land, sea, and air transportation.

(14) Supplies of food, water, fuel, and other vital necessities including administering its distribution to the civilian population.

(15) Decontamination following radiological or toxic gas incidents.

(16) Emergency construction.

(17) Restoration of public facilities.

(b) *Air Force.* The Air Force is equipped for aerial reconnaissance, photographic, and transport missions. By use of the helicopter, the Air Force has furnished rescue service during flood emergencies. Regulations concerning processing requests for aerial photography by the Air Force are contained in ER 1110-2-1002.

(c) *Defense Civil Preparedness Agency (DCPA).* Assist State and local officials in their preparation to meet disaster emergencies; and makes available in time of disaster stockpiled civil defense equipment and supplies.

§ 203.23 Other agencies.

As indicated in Part 502, the closest cooperation between disaster relief agencies is necessary to mitigate the results of natural disasters. Contacts should promote mutual assistance in execution of assigned missions, avoid duplication of effort, and preclude encroachment on other agencies' statutory authorities. These associations foster professionalism and permit proper referrals of disaster victims who need assistance. A list of these agencies with a brief discussion of their mission is as follows:

(a) *Federal Disaster Assistance Administration (FDAA).* Section 101 of Pub. L. 93-288 authorizes Federal assistance to State and local govern-

ments in a major disaster or emergency (Subpart H of this part).

(b) *American National Red Cross.* The national organization of the Red Cross is organized to undertake activities for the relief of persons suffering. The Red Cross is required to continue and carry on a system of national and international relief in time of peace; to apply that system in mitigating the suffering caused by pestilence, famine, fire, floods, and other great national calamities; and to devise and carry on measures for preventing those calamities. The disaster activities carried on under Division or District Engineer authority and responsibility will be coordinated as necessary with those of the Red Cross, and that organization will be given full cooperation in its work of mass shelter, feeding, and care incident to major floods or coastal storm. Additional guidance is provided in Part 502.

(c) *The Salavation Army.* Its purpose is to meet the needs of victims of natural and man-made disasters. It aids in registration and identification of victims; missing persons services—locating individuals and answering inquiries from concerned relatives and families outside the disaster area. Provides meals and/or snacks for disaster victims and emergency workers at the scene of the catastrophe. Collects the following donated goods for victims according to pre-determined need: Food, clothing, furniture, medical supplies, building materials, bedding, utensils, tools, etc.

(d) *Department of Agriculture*—(1) *Agricultural Stabilization and Conservation Service (ASCS).* Provides up to 80 percent cost-sharing assistance to farmers for emergency conservation measures (ECM program) on farmlands. The program is authorized by Pub. L. 85-58 and requires a disaster declaration by the Secretary of Agriculture. It may include debris removal and rehabilitation of farmlands after a natural disaster in the declared counties.

(2) *Soil Conservation Service (SCS).* Furnishes emergency watershed protection against flooding and the products of erosion. The emergency measures are authorized as amended in section 216, Flood Control Act of 1950 (Pub. L. 81-516). They may include repair of dams and dikes, stream clearance, bank stabilization, and emergency conservation measures.

(3) *Extension Service (ES).* Renders advice on cleanup of damaged property, sanitary precaution, water supply and sewage disposal, insect infestations, use of canned or locker-stored food subsequent to disaster caused power failure, food and water for livestock, safety of damaged buildings, substitute planting for damaged crops, grain storage problems, and renovation of farm equipment and facilities.

(4) *Forest Service (FS).* Furnishes personnel and equipment for rescue work, snow removal, and fire fighting in disaster situations located in or immediately adjacent to a national forest.

(5) *Rural Electrification Administration (REA).* Assist in restoration of electric power and rural telephone service in REA service lines. May assist other power service restoration. Also furnishes credit and technical assistance to rural electric and telephone cooperatives whose facilities have suffered damage as a result of the disaster.

(e) *Department of Commerce*—(1) *Office of Industrial Mobilization.* Provides assistance in expediting procurement of materials and equipment required for rehabilitation of plants producing defense materials which have been damaged or hampered by disaster. Machine tools may be leased from the Commerce inventory.

(2) *National Weather Service (NWS), National Oceanographic and Atmospheric Administration (NOAA).* Provides:

(i) Storm warning including tornado, hurricane, cold wave, heavy snow, blizzards, and heavy rainfall.

(ii) Weather forecast.

(iii) Flood warnings.

(iv) Forecasts of water stages, in particular the peak flows and duration of high water. Since the issuance to the public of forecasts or river discharge and stages is the legal responsibility of the Weather Service, forecasts prepared by the Corps of Engineers in the execution of its responsibilities should not be released to the general public except under exceptional circum-

stances in a major emergency. However, release to interested parties of factual information on current storms or river conditions and properly quoted Weather Service forecasts is permissible.

(3) *Maritime Administration.* Provides:

(i) Lease of tools, automotive and floating equipment, and other equipment and supplies.

(ii) Rescue operations by any ship under the jurisdiction of the Maritime Administration.

(iii) Charter of ships from the national defense reserve fleet for transportation, shelter, storage, or electrical power in disaster areas.

(iv) Lease of shore-based installations for shelter and storage near disaster areas.

(v) Provide trained personnel and equipment for fire fighting in a disaster area.

(4) *National Ocean Survey.* Provides seismic seawave warnings (Tsunami).

(f) *Department of Health, Education, and Welfare (DHEW)*—(1) *Food and Drug Administration (FDA).* Cooperates with local, State and Federal food and drug agencies in:

(i) Inspecting, impounding, or destroying damaged food and drug supplies, with all due consideration to the processes of law.

(ii) Inspecting, closing, and certifying for re-opening of damaged food and drug manufacturing and warehousing establishments.

(iii) Keeping informed as to the proper methods for handling contaminated, spoiled, or suspect foods and drugs. District Engineers will notify District Directors of the FDA of all floods which are considered to cause damage to food and drug stocks or to contaminated water used in the manufacture or processing of foods and drugs.

(2) *Public Health Service (PHS).* In emergency situations, it utilizes its health resources and technical personnel to control communicable and chronic diseases by assisting State, local and Federal agencies in maintaining adequate and safe food supply, sanitary waste disposal, adequate refuse disposal facilities, and the control of insects and rodents. It can also be expected to evaluate health hazards and recommend corrective action. Assistance may also include emergency assignment of its medical and nursing personnel, engineers, entomologists, sanitarians, epidemiologists, veterinarians, and laboratory technicians.

(3) *Office of Education.* This agency furnishes financial assistance for repair or restoration of damaged public school facilities, replacement of supplies and equipment, and operation of temporary schools pending repair or replacement of damaged facilities in a major disaster.

(g) *Department of Interior*—(1) *Bureau of Mines (USBM).* Has major Federal responsibility in mine disasters and will assist by providing engineers and safety personnel for inspection and prevention of fire explosions, and other hazards such as escaping gas.

(2) *Bureau of Reclamation (USBR).* Operating in the 17 Western States, the USBR may render Flood fighting assistance and perform rescue operations in any natural disaster situation including transportation of personnel and materials. May also assist local interests in repair and restoration of flood control works when authorized by the Commissioner of Reclamation. Provides some earthmoving equipment and supplies such as tools. Can provide personnel trained in operation of electric power lines and distribution systems with attendant trucks and support equipment.

(3) *U.S. Geological Survey (USGS).* In addition to furnishing a variety of maps, the USGS collects and furnishes data on stream-flow and water surface elevation at many locations. Close coordination with pertinent field offices of the USGS will therefore be maintained during flood emergencies.

(h) *Department of Transportation (DOT)*—(1) *Federal Highway Administration (FHWA).* Federal funds for emergency repair of Federal-aid highways and bridges which have suffered serious damage as the result of disaster over a wide area are available on a matching basis. Additionally, Federal funds up to 100 percent are available for the repair of reconstruction of highways, roads, and trails which the Secretary of Transportation shall find

have suffered serious damage as the result of a disaster over a wide area, such as by floods, hurricanes, tsunami, earthquakes, severe storms, landslides, or other catastrophes in any part of the United States.

(2) *Office of Emergency Transportation (OET).* Assistance in coordinating transportation intelligence.

(3) *Federal Aviation Administration (FAA).* This agency maintains an extensive air navigation and communication network. It may provide communications for local authorities when commercial facilities are not available. It will assist in determining damage to airports, may participate in repair or restoration, and will assist in mobilization of local civil aviation for emergency operations.

(4) *U.S. Coast Guard (USCG).* Coordination between the Corps of Engineers and the Coast Guard under natural disaster conditions will usually be in connection with emergency flood control activities. The primary mission of the Coast Guard in time of floods is to render aid and assistance and supplement the efforts and resources of State and local governments and the Red Cross. Operations are commensurate with the gravity of the situation and the facilities available. The USCG's rescue capability is of particular note. Responsibility for icebreaking or maintain essential navigation also belongs to the Coast Guard.

(i) *General Services Administration (GSA).* In major disaster areas the GSA has accepted the responsibility to provide office space, hotel rooms, motor pool cars, communications, and other essential services.

(*1*) *Federal Supply Service (FSS).* The FSS can provide emergency procurement and warehousing operations in a disaster area; supply common-use items to Government agencies to insure continuity of essential operations; and perform general procurement and supply operations for wholesale and quantity deliveries from available sources.

(*2*) *Public Buildings Service (PBS).* This agency will furnish advice on repair of damaged public buildings, or their demolition, acquisition of temporary quarters, and is a source of engineering and architectural personnel.

(*3*) *Property Management and Disposal Service (PMDS).* This agency can provide for the lease of idle government-owned tools and production equipment; sale of excess material from the national stockpile; and supply from stocks on hand in Civil Defense warehouses, those items required for disaster relief. Included within its organization are elements that provide services in ascertaining the availability of excess and surplus personal property needed for disaster relief purposes and the disposal of such property upon the termination of a disaster.

(j) *Federal Communications Commission (FCC).* The FCC provides for clearing the amateur radio channels to permit emergency communications and use of emergency frequencies for amateur operations.

(k) *Interstate Commerce Commission (ICC).* Assistance available from the ICC includes:

(1) Temporary authority for motor or water command and contract carriers to perform urgently needed transportation for hire to points and within areas having no carrier service capable of meeting the needs of the situation.

(2) Permission for common carriers to transport passengers without charge, or freight at reduced rates, into or out of disaster areas.

(3) Suspension of any or all rules, regulations, or practices of car service.

(4) Direction of joint use of equipment and facilities.

(5) Direction of preference, priorities, or embargoes for specific traffic in specified areas for a definite time.

(6) Diversion or rerouting of traffic by rail, water, or highway.

(l) *Coordination with U.S. Fish and Wildlife Service (USF&WS).* It is the policy of the Chief of Engineers that the provisions of the Fish and Wildlife Coordination Act (Pub. L. 85-624) and the formal agreement between USF&WS and the Corps of Engineers (ER 1120-2-401) shall apply to emergency work performed by the Corps under authority of Pub. L. 84-99 or at the direction of FDAA under Pub. L. 93-288. District Engineers will cooperate with conservation efforts by coordinating with the USF&WS on work accomplished under Pub. L. 84-99 au-

thority affecting fish and wildlife resources. When time is a limiting factor, informal coordination may be accomplished. For work accomplished with the FDAA, the Corps and USF&WS have agreed that USF&WS is responsible for recommending appropriate conservation measures to the FDAA prior to any project authorization. Maximum cooperation with conservation agencies will be included in accomplishing FDAA-directed work. Any features considered economically unfeasible or not practical will be referred to the responsible FDAA representative for decision.

§ 203.24 Non-Federal interests responsibilities.

(a) *Disaster preparedness.* Maintain flood and shore or hurricane protection projects in a satisfactory condition in preparation for possible disaster. Local maintenance will include stockpiling or otherwise providing for sandbags and/or other materials or equipment. Further it includes training of personnel and stressing familiarization with operation and maintenance procedures.

(b) *Emergency operations.* During a flood fight, non-Federal interests are normally responsible within limits of their capabilities for the following: Providing power for emergency operations, providing manual labor as required, patrolling levees, utilizing all available community owned equipment and operators, and removing temporary structures if necessary.

(c) *Rehabilitation.* It is the policy of the Chief of Engineers that as a prerequisite or authorization of a non-Federal rehabilitation project non-Federal interests will furnish assurances of local cooperation. As a minimum the local cooperation agreement will include provisions that local interest will:

(1) Provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project.

(2) Hold and save the United States free from damages due to the construction operation and maintenance of the project, except damage due to the fault or negligence of the United States or its contractors.

(3) Maintain and operate all the works after completion in accordance with prescribed regulations. Sponsorship by a political entity is preferred; however, in exceptional cases rehabilitation projects may be sponsored by individual as well as organized property owners. Additional features of local participation, including financial contributions, will be required with respect to any improvements undertaken in connection with the work, and for maintenance or other items considered the responsibility of non-Federal interests.

§ 203.25 Emergency drinking water.

Non-Federal interests must initiate their request for emergency drinking water through the Governor of the affected State, since Corps response must be restricted to request for assistance received from a State governor. Request must include the criteria as set forth in Subpart F of this part.

§ 203.26 Advance measures.

Advance measures must be geared to complement maximum non-Federal effort. Compatible with local capabilities, justified from an engineering and economic standpoint, and capable of completion in a timely manner. Non-Federal participation can be in the form of either financial contribution or utilization of non-Federal resources. The assurances of local cooperation and participation, generally referred to as the abc's, will be furnished to the Corps prior to construction.

Subpart C—Disaster Preparedness Code 910–100

§ 203.31 General.

(a) *Definition.* Disaster Preparedness consists of those activities designed to facilitate quick and effective response in time of natural disaster.

(b) *Basic responsibilities.* The Division and District Emergency Operations Managers are responsible for the overall adequacy of the Division and District Disaster Preparedness Program. Formulation and coordination of the programs should be performed by the Division and District Emergency Operations Manager in ac-

cordance with procedures detailed in ER 11-2-320 and this subpart.

(c) *Annual program.* The Division and District disaster preparedness program is formulated and funded annually according to organizational requirements. All programs must be reviewed by DAEN-CWO-E before implementation. District programs must be thoroughly reviewed by Division for compliance with program guidelines before forwarding to DAEN-CWO-E for authorization, work allowance and funding. Deficient programs will not be reformulated by DAEN-CWO-E and will be returned to the Division/District for resubmission.

(d) *Organization.* The organization of the disaster response elements prior to the occurrence of a disaster incident is vital for effective response.

(1) *Corps disaster teams.* The presence of highly competent Corps personnel on the site immediately following the occurrence of a natural disaster is essential. Division and District Engineers will assure the organization of an emergency cadre capable of managing an emergency operation center and of carrying out activities in the disaster area. Subpart B of this part prescribes procedures for interdivisional assistance when additional support is necessary. Emergency teams should be prepared to operate from remote temporary headquarters.

(2) *Number and uniformity of disaster teams.* The essential functions within District organizations must be maintained during disaster operations. The commitment of personnel and equipment to disaster teams must be considered in the light of existing organizational strengths and requirements. At least one disaster team, to constitute an area office, will be organized to survey the disaster area. Its size and composition will depend on the particular requirements encountered. Personnel rosters, including qualifications of disaster team members, will be published in Division Supplement A and District Annex A and will be kept current.

(3) *Area Office.* An emergency area office supervised by a single, qualified individual having had prior training in Corps of Engineers' emergency procedures will be established in the disaster area to support the disaster teams. The nature of the disaster, the size of the area involved, and other such considerations may require the establishment of area offices to accommodate smaller, subordinate teams. (The term "Area Office" is used as a familiar frame or reference and is not intended as an indication of established organizational authorities.)

§ 203.32 Program features.

Features have been established as follows to coincide with activities under the Disaster Preparedness Program.

(a) Emergency Manuals.

(b) Exercises and Training.

(c) Inspection of Non-Federal Flood Control Works.

(d) Supplies and Equipment.

(e) Supervision and Administration. (See ER 11-2-320.)

(f) Emergency Operations Manager and Staff. (See ER 11-2-320.)

(g) District Overhead. (See ER 11-2-320.)

§ 203.33 Emergency Manuals.

Part 203 provides the basic guidance on emergency preparedness, organization and operations, and is intended for use at all echelons. Specific operational information for Division and District level operations is provided through supplements by Divisions and annexes by Districts which are to be reviewed and updated annually.

(a) *Supplements and Annexes*—(1) *Supplement A/Annex A.* "Natural Disaster Activities under Pub. L. 84-99" will cover Division/District operational procedures under the purview of Pub. L. 84-99. Details concerning the emergency organization and functions, disaster preparedness program, operational policies and other information peculiar to that office will be included. The supplements and annexes should closely parallel Part 203 in format and be designed for easy use by emergency augmentees. Included in the supplements and annexes, or optionally published as a separate document, will be a Hurricane Preparedness Plan for those Divisions and Districts containing coastal areas susceptible to hurricanes.

(2) *Supplement B/Annex B.* "Natural Disaster Activities Under Pub. L. 93-288" will cover Division Supplement and District Annex operational procedures in support of the FDAA.

(3) *Supplement C/Annex C.* "Emergency Communications" will cover organizational policies and procedures for the operation of communications equipment. It will provide for communications via local and long distance telephones, TWX services, commercial telegraph, and applicable electronic capabilities. The Supplement and Annex is applicable to all natural disaster situations and other emergencies. Supplement C/Annex C should be coordinated with the Continuity of Operations Plan. Procedures for the authorization and establishment of radio and radar installations, and the allocation of call signs and frequencies, are covered in ER 1125-2-308. ER 105-1-5 covers procedures and responsibilities for fixed signal communications systems, facilities, and services other than electronic communication systems. In general, detailed Standing Operating Procedures should be confined to the District Annex. The Division Supplement should provide policy and guidance for coordination between Districts within the Division and with other Divisions.

(4) *Annex D.* Additional annexes will be prepared by the District as required.

(b) *Pocket manuals.* The preparation of other documents, such as pocket manuals, may be accomplished at operating Divisions and Districts. Such pocket manuals should be locally oriented and include only those portions of this regulation and related public laws and instructions pertinent to field use. A similar pocket manual, Part 203, covering the main authorities and principles has been prepared by DAEN-CWO-E for emergency briefings.

(c) *Distribution.* One copy of the supplements and annexes will be furnished HQDA (DAEN-CWO-E) Washington, D.C. 20314 upon issuance. The ER 310-1-1 submission satisfies this requirement for Division supplements. Local distribution of this regulation and supplements will be made by Division and District coordinators to CONUSA or Unified Commanders, regional director or participating Federal agencies, and heads of State and local government, as appropriate.

§ 203.34 Exercises and training.

(a) *General.* Personnel assigned roles in emergency operations will be provided the opportunity and encouraged to familiarize themselves with pertinent publications. Selected individuals will receive in-service training in the disaster operations field through attendance at government-sponsored courses and other training activities undertaken at Division and District offices. Attendance at the OCE sponsored Emergency Operations Course is a basic requirement. FDAA conducts training which is also applicable and is considered a part of the Corps support to FDAA team training.

(b) *Flood and coastal emergency exercises.* Flood and coastal emergency exercises will be conducted by Divisions and Districts to test the plans developed by Supplements and Annexes A, B, C and D to Part 203. Exercises will be conducted as determined appropriate by the Division Engineer. HQDA (DAEN-CWO-E) Washington, D.C. 20314 will be advised of the scheduled training in the Quarterly Summary Report. Following each exercise, the District Engineer will furnish the Division Engineer a letter report indicating the nature and scope of the exercise, weaknesses revealed, and any corrective action required. The Division Engineer will forward one copy of the report to HQDA (DAEN-CWO-E) Washington, D.C. 20314 together with a copy of the Division Engineer's action thereon.

(c) *Damage survey teams.* Designated members of the Corps damage survey teams are required to participate in training for preparation of FDAA Damage Survey Reports. Repeat assignment of trained and experienced Corps personnel to these teams is desirable and encouraged. Use of personnel thoroughly familiar with the eligibility criteria for the work categories will aid in expeditious, uniform preparation of the survey reports.

§ 203.35 Inspection of non-Federal flood control works.

(a) *General.* Regular inspection of non-Federally constructed flood control works will generally be limited to projects that have received Corps assistance pursuant to Pub. L. 84-99. Scheduling of the inspections should be coordinated with the inspection of completed works program when practicable. Inspections should be conducted to establish whether the flood control works will continue to provide the intended degree of flood protection, and to determine if the maintenance program is adequate. Usually, these projects will not require the same degree of inspection and maintenance commitments expected for Federally authorized projects.

(b) *Local requests.* If requested by non-Federal interests, inspection of flood control works may be performed even though there has been no previous Corps Pub. L. 84-99 assistance provided.

(c) *Advice and reporting.* Information on the results of inspections will be furnished to non-Federal interests and should be maintained in District offices. Non-Federal interests will be informed that the quality of maintenance and that maintenance deficiencies are factors for consideration of future work and local cost-sharing participation in any proposed work. Follow-up inspections will be made to monitor progress in correcting deficiencies. Liaison with local interests will include suggestions on required remedial maintenance, organization, other measures or preparedness for flood and coastal emergencies.

§ 203.36 Supplies and equipment.

Lists of supplies and equipment available for use in a disaster emergency will be prepared and maintained current. These lists should include, but need not be limited to floating plant, construction materials and equipment, portable radio facilities, and emergency office support supplies. A package of Alert Cadre use materials, ready for immediate issue, should be maintained. Stockpiling for natural emergency operations requirements will be limited to supplies charged to the Disaster Preparedness Program in conformance with ER 11-2-320. Items such as video tape equipment, radios and other supplies not used exclusively for Emergency Operations, should be funded on a pro-rata share for initial cost and maintenance.

(a) *Stream gages.* Pub. L. 84-99 funds will not be used for installation or maintenance of stream gages. This activity should be performed under the Cooperative Stream Gaging Program or with project funds, if appropriate.

(b) *Emergency radio equipment.* The acquisition of radio equipment essential for flood and coastal storm emergency operations supplementing regular project equipment is chargeable to Code 910-100, Disaster Preparedness. Their operation should be charged to the pertinent activity as a Code 910-200, Emergency Operations, expenditure.

(c) *Training aids and equipment.* Supplies and equipment items pertaining to the training of personnel for natural emergencies may be procured under the Disaster Preparedness Program. Training films, slides, publications, and specialized training aids are included in the category.

(d) *Sandbags.* Depot stocks of sandbags for flood emergency use are not maintained. Engineer District procurement offices may acquire flood emergency use sandbags under either category, Disaster Preparedness, or Emergency Operations, depending upon the flood emergency phase. When needed, every effort will be made to purchase untreated bags locally, to take advantage of cost savings. Preservative treated sandbags may be purchased if required to replace District reserve stocks depleted in the flood fight.

(e) *Pumps.* Pumps for use during flood emergencies may be rented as needed to supplement local flood fight measures under Code 910-200, "Emergency Operations" category. Rental procedures are recommended to avoid maintenance and storage costs when not in use. If necessary, pumps may be purchased with prior approval from OCE during emergencies, and subsequently transferred and maintained under the Code 910-100, Disaster Preparedness Program.

(f) *Emergency operations identification.* Specific items to provide a means

of increasing the visibility of Corps employees, vehicles, and office locations during Corps emergency operations, including signs, banners, clothing, etc., identifying U.S. Army Corps of Engineers Emergency Operations, will be centrally procured by HQDA (DAEN-CWO-E) Washington, D.C. 20314.

(g) *Emergency operations centers (EOC).* The EOC will normally be activated and staffed during major emergencies. It will be a part of the Division or District office and under the direction of the Emergency Operations Manager. The center will, as a minimum, coordinate all emergency measures, be a central point of contact, and furnish required reporting activities. A specific area will be designated for an EOC. Provision for display boards, radios, telephones, telecopiers, and other requirements is authorized under this feature.

Subpart D—Emergency Operations Code 910–200

§ 203.41 General.

(a) *Mission execution.* Division and District Engineers are responsible for the overall accomplishment of authorized emergency missions in accordance with the policies, responsibilities, duties, and functions prescribed in this regulation. They execute their responsibilities through an organization of emergency operations managers and operations personnel who are knowledgeable in the requirements, authorities, and needs within the division or district.

(b) *Objectives of disaster operations.* The objectives of Federal and local agency natural emergency operations fall into three general categories: Disaster assistance, disaster fighting, and disaster recovery or rehabilitation. The Corps of Engineers is normally directly engaged in disaster fighting and rehabilitation, but may be called upon in rescue operations.

(c) *Policy.* In time of flood or coastal storm, emergency operations will be undertaken by the Corps of Engineers to supplement local efforts. Protective and preventive measures will generally be of a temporary nature. A declaration of a State of Emergency or a written request by the Governor of a State, or responsible authority of a political subdivision, while desirable, is not a prerequisite to furnishing emergency assistance under Pub. L. 84-99. It is the policy that local assurance of cooperation and indemnification of the U.S., and appropriate requests, will be obtained. These assurances must specify that they pertain only to costs or work eligible under Pub. L. 84-99 so as not to prevent local governments from receiving funds from other Federal programs. Participation by the Corps of Engineers in emergency operations may extend to assumption of leadership role if responsible local authorities are unable to cope with the situation. Such leadership is limited to operational control of emergency forces and should be followed by a request from State or local authorities. These actions should be followed by a request from State or local authorities. These actions should be subordinate to the State and local responsibilities and authorities. The Corps' capabilities and pre-eminence in the field should be made available when needed. An aggressive interest in providing assistance to the community including all available pre-flood information, prediction, and advice is desirable.

§ 203.42 Authorities.

The authority under Code 910-200 "Emergency Operations" applies to emergency flood fighting and rescue, and protection of Federally authorized shore or hurricane projects. The flood fighting measures are applicable to any flood control structure—Federal, public or private. Included in the authority is collection of flood data that would be lost if not collected during the flood, or soon after the flood recedes. Channel debris clearance is authorized if the debris is causing flooding. Post flood debris clearance, or cleanup, is not authorized. Where other Federal agencies have emergency authorities for their structures, Corps work under Pub. L. 84-99 is not appropriate.

(a) *Field investigations.* This authority applies to special investigations of flood or coastal storm potentials to

obtain data not otherwise available. Initiation of field reconnaissance for data collection should be due to some special condition for unusual concern. The authority may be used to collect essential data of a transitory nature, such as high water marks and snow pack. District Engineers and operating Divisions have obligational authority up to $10,000 for each situation or incident. Divisions and HQDA (DAEN-CWO-E) Washington, D.C. 20314 will be notified when the data indicates a potential for a damaging flood or coastal storm and follow-up with a written report.

(b) *Flood emergency operations.* Furnish required assistance in support of other agencies and by supplementing local resources as appropriate. Division and District Engineers who accept requests to assume leadership and direction of flood fighting operations will not assume the responsibilities of other agencies. Corps assistance may include the following: Furnishing technical advice and assistance; furnishing flood fighting materials, i.e., sandbags, polyethylene sheeting, lumber, pumps, riprap to stabilize eroding levees or improved property; hiring of equipment and operators for flood fighting operations; and removal of log or debris jams that are blocking stream flow and causing, or are likely to cause, flooding of communities. District Engineers, and operating Divisions, have obligation authority up to $100,000 for each situation or incident. Additional authority for emergency operations will be requested of HQDA (DAEN-CWO-E).

(c) *Authorization of post-flood reports.* Data collection and other investigative and reporting activities may be initiated or continued for each flood event when the storm has ceased or high water has receded. A flood event is defined as a situation where heavy rains, snowmelt, or ice jamming caused overbank flows with resulting flood conditions. Such events terminate on cessation of flood or high water conditions with no prediction of early recurrence. Post-flood reports compile the data related to the flooding. District Engineers, and operating Divisions, have obligation authority up to $10,000 for each incident.

(d) *Ice jam removal.* The Corps policy is that ice jam removal is a local responsibility. Corps technical advice and assistance can be provided under the standing $10,000 authority, as specified in paragraph (a) of this section. When the ice jam poses an immediate flood threat to improved property, Corps efforts to supplement State, county, and local efforts is authorized under Code 910-200. The assistance must be limited to flood fighting and terminate as the flood flows recede. Actual ice jam removal should be a last resort action by the Corps. Blasting of ice jams should be limited to exceptional cases as the accompanying effects often outweigh the benefits. Complete coordination with local authorities is required. Releases from liability for property damage and personal injury are required.

(e) *Snagging and clearing.* Removal of log jams or obstructions causing flooding beyond the local, county, and State capability may be accomplished to relieve the immediate threat or flood. When flood waters recede within the channel boundaries, the flood fight will terminate and additional stream debris clearance will not normally be performed under Pub. L. 84-99.

(f) *Limitation on extent of emergency operations.* Following determination that a specific emergency program is to be undertaken by the Corps of Engineers, emergency measures will be of temporary nature designed to meet the imminent threat and to preserve existing protective works. Pub. L. 84-99 authority does not extend to the removal of temporary protective works. Work of a permanent nature may be undertaken if it is the minimum work necessary to achieve the required protection.

(g) *Limitation on diversion of emergency (Pub. L. 84-99) funds to local interests.* Emergency funds will be expended directly by the Corps of Engineers for authorized purposes. No authority exists under Pub. L. 84-99 to reimburse local interests for costs of emergency operations accomplished on their own account.

§ 203.43 Procedures.

(a) *Personnel.* Personnel operating under emergency disaster conditions may be subjected to extreme hardships. Accordingly, all regulations pertaining thereto will insure the maximum possible protection of the personal welfare of the individual. Accomplishment of this requires that arrangements be made for advance payments of travel allowance, limiting the tour of duty, and control of overtime.

(b) *Hazard pay differential.* Pay differential of 25 percent is authorized for irregular or intermittent duty while working within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado, flood or similar cause, when the structure has been declared unsafe by competent technical authority, and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by competent authority. Federal Personnel Manual Supplement 990-2, Book 550, Chapter 59, authorized the differential in the general schedule work situation.

(c) *Communication and transportation.* Effective use of all types of communication and transportation facilities will be required in any emergency disaster operation. Radio facilities should be controlled by the operation forces. The use of all types of commercial communications and transportation facilities will be subject to established administrative procedures.

(d) *Designation of transportation agents.* To facilitate transportation and insure proper shipment and receipt of property during emergencies, district emergency plans should designate agents to perform these functions.

(e) *Military air transportation.* Emergency operations will be conducted with the policy of utilizing local and commercial resources and organizations to the maximum of their capabilities. Agreements with National Guard and Reserve component units are authorized when additional support is required. Requests for airlift support by either active Army or Air Force units will be processed through divisions to their respective CONUS Army commands. Each request will require the following:

(1) Description, origin, and destination of the cargo.

(2) Weight and cube measurements of the shipment.

(3) A statement by the Division Engineer or his representative that commercial firms are not available, or able, to accomplish the mission as required.

(f) *Costs.* Costs incurred by DOD agencies that are additional to their normal operating expenses, and in support of Corps flood fighting operations, are reimbursable under Pub. L. 84-99, Code 910-200, funding. DOD costs in support of Corps response to mission assignments from FDAA are reimbursable by FDAA and included as Corps expenses.

(g) *Liaison.* During emergency operations of major proportions, it may be necessary to provide special liaison between HQDA (DAEN-CWO-E) Washington, D.C. and the field. A Division or District representative will be detailed to the Emergency Operations Branch (DAEN-CWO-E) in OCE if requested.

(h) *Loan or issue of supplies and equipment.* Issuance of sandbags, other material, or government equipment (less operating personnel if appropriate) to non-Federal interests is authorized only in actual emergencies. Furnishing government supplies is permitted only after local resources are exhausted or it becomes evident that they will be exhausted. Unused stocks on loan should be returned to the Corps. Consumed supplies will be replaced in kind or paid for by local interests to the extent considered feasible and practicable by the Division or District Engineers.

(i) *Identification of Corps of Engineers operations.* Corps of Engineers personnel and equipment engaged in emergency operations will be identified through the use of Corps of Engineers distinctive identification items as required by current regulation. Red Emergency Operations jackets and shirts have been issued to Divisions and Districts for distribution to emergency operations teams performing disaster work. A stock of these items is maintained and additional require-

ments should be submitted to HQDA (DAEN-CWO-E) Washington, D.C. 20314. Distinctive car door signs have been made available for issue. An Emergency Operations Award will be issued to personnel taking part in significant flood fights or other disaster operations. These items are described in OCE Supplement 1 to AR 672-20.

§ 203.44 Reporting.

This section outlines the submission and distribution of reports required from Divisions and Districts for use within HQDA (DAEN-CWO-E) Washington, D.C. in connection with activities under Pub. L. 84-99.

(a) *Commercial teletypewriter (Western Union) Service.* Teletypewriter (TWX) machines have been installed in the Division and District Offices and in OCE primarily to permit the fastest means of reporting emergency situations. The TWX machine installed in OCE Civil Works Directorate has a 24-hour automatic receiving capability with an answer back signal DAEN-CW WSH. One, receive only, monitor is connected to this primary TWX line permitting a simultaneous readout of information in the Emergency Operations Center. A second TWX, send and receive station (DAEN-CW WSH B), is located in the Emergency Operations Center for emergency use when the primary station cannot be reached. A directory of Corps of Engineers call numbers on the Western Union TWX service is included in Appendix D (Note the Alaska District and Pacific Ocean Division do not have TWX facilities. They will submit reports by the fastest electrical means available).

(b) *Reports required.* (1) Flood or coastal storm potential reports (see paragraph (d) of this section).

(2) Initial report of flooding or coastal storm (see paragraph (e) of this section).

(3) Follow-up flood or coastal storm situation reports (see paragraph (f) of this section).

(c) *Classification of emergency situations.* For purposes of reporting, significant floods and other natural disasters are categorized and described below:

(1) *Category A.* Includes all major floods in large drainage areas in which extensive property damage or serious danger to life or flood protective works prevails or is imminent.

(2) *Category B.* Consists of relatively localized floods that produce high property damage or hazard to life without creating or contributing substantially to dangerous flooding downstream. Category B floods also include so-called "flash floods" and other short duration floods that preclude submission of emergency flood reports to the Chief of Engineers before critical phases of flooding have passed.

(3) *Category C.* Consists of floods in large drainage areas which have not directly caused loss of life or extensive property drainage, but create conditions especially favorable for a major flood if further adverse conditions develop.

(4) *Category D.* Includes non-flood incidents such as tornadoes, volcanic eruptions, earthquakes or other natural phenomena causing extensive damage where Corps of Engineers assistance will be involved or is likely to be involved.

(d) *Flood or coastal storm potential reports.* District Engineers will report to the Division by TWX, with information copy to HQDA (DAEN-CWO-E) Washington, D.C. 20314, any potential flood, coastal storm, or advance measures action that should be brought to the attention of the Chief of Engineers. The report is designed to facilitate responses to inquiries from Members of Congress and others at the Washington level. Accordingly, it should be prepared and dispatched expeditiously, and in advance of any actual disaster (flash flood excepted). Include a narrative summary of the situation and, if possible, an estimate of the probable disaster impact development. If feasible, each report will be definitive and minimize a follow-up report. Dispatch of subsequent messages will be determined by the urgencies of each situation as it develops. These reports, prefixed by "Flood or Coastal Storm Potential Report," will be transmitted to the Division Engineer with simultaneous copies to HQDA (DAEN-CWO-E) Washington, D.C. 20314, the appropriate CONUSA

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or Unified Commander, and the FDAA National and Regional Directors concerned. The reports required here pertain to emergency short range situations. Long range seasonal conditions are reported in accordance with ER 1110-2-240.

(e) *Initial report.* Initial reports will be furnished as follows:

(1) *During OCE office hours.* An initial report from the Division on any non-flood disaster or imminently anticipated actual flood or coastal storm condition, whatever their nature, will be made during OCE office hours by telephone directly to the Chief, Emergency Operations Branch (202-693-6875). Such initial report will serve the primary purpose of alerting the chief of Engineers to the possibility of inquiries to him for situation reports. Any information of the type listed in paragraph (c) of this section will be included to the extent immediately available from sources including local news reports. The initial report will not be delayed in order to collect and compile additional information.

(2) *Outside of OCE office hours.* During periods outside of OCE office hours, the initial report by telephone will be deferred unless it concerns a major emergency or serious short-duration disaster, such as a severe flash flood or tornado. In that event, the initial report will be made to the Chief, Emergency Operations Branch or assistant, at their home telephones. A TWX message may be substituted for a deferred telephone initial report if the message is available at the start of the next work day. Confirmation of initial telephone messages to OCE will be by TWX.

(3) *Advising CONUSA Commanders, FDAA National and Regional Directors, and Others.* District Engineers (Reference Part 502) will furnish the CONUSA, or Unified Commander concerned, pertinent information on Category A or B floods or Category D disasters, using the fastest electrical means available. Other officials concerned will be similarly informed, including the FDAA Administrator and regional Director(s), American Red Cross Area Manager, Coast Guard District Commander, State Natural Disaster (Civil Defense) Director and other key Federal, State and local officials, as appropriate. This may be done by means of information copies of the report submitted to Division and OCE, except that such addressees will not be furnished detailed hydrologic data, details concerning the operation of flood control works, or preliminary estimates of damages prevented by engineer projects.

(f) *Reports during flood or coastal storm.* Following the initial report, additional reports will be made as indicated below:

(1) *Category A flood situation reports.* Whenever a Category A flood is in progress, submit daily situation reports direct to the Division and an information copy to HQDA (DAEN-CWO-E) Washington, D.C. 20314. These reports, by TWX, will be dispatched as early as practicable but not later than noon (local time). On working days, they will be dispatched by TWX, preceded or supplemented if the situations warrant, by telephonic report(s). On Saturdays, Sundays, holidays, and non-working hours, reports by telephone will be made only in the event of significant change in flood conditions as previously reported, or the occurrence of major flooding or other development of serious proportions, resulting or likely to result in heavy loss of life and/or property damage. TWX reports may be transmitted to Office of the Chief of Engineers on Saturdays, Sundays, holidays, and at night to be available at the start of the next working day.

(2) *Reporting format.* During the critical phase of Category A flood, the daily TWX situation report will include the following coverage, as available and applicable, using the paragraph numbers shown in the following example. Subparagraphs may be used as required. In order to meet the noon deadline (local time) as stated in paragraph (f) of this section, items 6, 7, and 8 of the report may be omitted from the TWX and sent by telecopier or other means in time to be received by close of business. When the report is sent in two parts they should bear the same report number.

Subject. Category A SITREP No. 3 (indicate FINAL REPORT submission).

1. *General Situation Summary.* Location of stricken area by river basin; weather conditions and forecast (include rainfall data); condition of flood control works and their effectiveness (identify whether Federal or non-Federal); Federal property (military and civil works installations) damaged or threatened; communities damages or threatened; essential transportation systems (land, air, marine and rail) out of service; emergencies declared by Governor(s); and any other significant events such as lives lost, utility failures, etc.

2. *Efforts by State and local interests.* Nature, location, and degree to which State and local interests are applying their capabilities in rescue, evaluation of flood fighting, and related matters. Include whether they can cope with the situation and any activity of National Guard (provide unit designation); Nature and location of prospective requests for Pub. L. 84-99 assistance; Status of a Governor's application for Pub. L. 93-288 assistance.

3. *Military efforts.* Nature of actions where taken by the military (Army, Navy, Air Force and other DOD components). Also, where applicable, indicate military participation in flood fighting and rescue work under Corps of Engineers direction and control, specifying unit designations.

4. *Other efforts.* Brief coverage of nature and location of support being rendered by Red Cross, Coast Guard, and other Federal, State, charitable, and local agencies furnishing significant aid. Indicate role of FDAA, location of field office if established, name and phone number of person in charge. List or describe liaison and coordination effected with other Federal agencies.

5. *Corps of Engineers efforts.*

(a) Summarize District Engineer's activity in discharging his mission, including liaison, rescue, flood fighting, damage surveys, and data collection. Upon activation of District EOC, provide hours of operation, phone number(s) and person in charge.

(b) Following is a summary of pertinent data on this flood event which began on 14 August 1975:

(1) Number of COE personnel involved—85 (20 District; 60 Field; 5 TDY).

(2) Number of sandbags furnished to date—250,000.

(3) Number of pumps on loan—14.

(4) (Other significant materials issued such as rolls of polyethylene sheeting, riprap, snow fencing, etc.).

(5) Number and value of emergency contracts—6—$75,000.

(6) Estimated total Pub. L. 84-99 obligations to date—$90,000.

6. Damages and Damages Prevented.

(A) Acres Flooded:

State	Agricultural	Other	Total
Mississippi	60,000	5,000	65,000
Louisiana	40,000	0	40,000

(B) Total Preliminary Damages Estimate:

State	Amount
Mississippi	$1,000,000
Louisiana	200,000

(C) Effects of Corps of Engineers Projects Permanent and Temporary Protection:

(1) Damage Prevented:

Mississippi	$5,000,000
Louisiana	10,000,000

(2) Acres Protected:

	Number
Mississippi	10,000
Louisiana	350,000

7. Tabulation of River State Data.

Gage	River stage		Tendency	News predicted		Record	
	Zero damage	Today		Crest	Date	Stage	Year
Mississippi River:							
Vicksburg, MS	30.0	35.0		38.0	Aug. 20	60.0	1943
Natchez, MS	21.5	28.7		31.0	Aug. 24	55.6	1937
Big Black River:							
Sun City, MS	14.0	17.5		18.0	Aug. 19	25.0	1960
Monroe, MS	12.5	16.0		17.0	Aug. 21	23.4	1973

8. Tabulation of Reservoir Data.

Reservoir	Average past 12 hr. (CFS)		Pool elevation		Tendency	Percent of flood control utilization
	Inflow	Outflow	Normal	Today		

The tabular data referred to above that are not dependent upon daily observations may be furnished HQDA (DAEN-CWO-E) in advance by letter for selected key stations, and subsequently omitted from teletype reports pertaining to those stations. After the critical phase of a flood has passed and stages have receded generally to a relatively nondangerous stage, daily reports, as specified above, may be reduced in scope. They will include a description of the flood situation in general terms, supplemented as required for clarity, by selected representative river stage and pool data. River stage data normally available on Weather Service teletype, Schedule C, CE sequence, may be omitted from reports submitted during the later recession phases of floods. During critical flood periods, daily reports will be adequately self-contained, inasmuch as the desired data are not always available from Weather Service teletype reports.

(3) *Category B flood situation reports.* As soon as practicable after occurrence of a Category B flood, a TWX report will be dispatched from the District concerned direct to the Division with information copy to DAEN-CWO-E in the manner specified in paragraph (f)(2) of this section. Category B flood will be reported on Saturdays, Sundays, holidays and night time in the same manner as Category A floods. Telephone reports will be made only when exceptionally severe property damage or loss of life is suffered; otherwise, TWX reports will be dispatched to the Division and HQDA (DAEN-CWO-E) as early as possible on the first working day following. The initial report will present a summary generally similar to that prescribed for Category A floods, based on information obtainable from all available sources. Subsequent reports will be submitted as required to present a reasonably accurate account of the extent and noteworthy effects of the flood.

(4) *Category C flood situation reports.* When Category C conditions prevail in a drainage basin tributary to river already above critical flood stage, a TWX Report summarizing conditions will be dispatched daily, on regular working days only, in the general manner prescribed in paragraph (f)(2) of this section. In the case of streams characterized by very slow or sluggish runoff, where stages usually remain above official flood stages for long periods during flood seasons without constituting an unusual flood hazard to downstreams areas, daily TWX reports will not be required, but reports should be forwarded at such intervals considered necessary to keep officials informed of stream flow conditions that might reasonably develop into serious floods. In preparing reports pertaining to Category C floods, it may be assumed that OCE has access to data normally transmitted over Weather Service Teletype Schedule C.

(5) *Category D natural disaster situation reports.* Daily TWX situation reports to the Division with information copy to HQDA (DAEN-CWO-E) Washington, D.C. 20314, subsequent to the initial non-flood disaster report under paragraph (e) of this section, are required only when the Corps of Engineers is engaged or likely to be engaged in furnishing assistance. Frequency of submission may be diminished according to developments. When furnished, these reports should include available and appropriate coverage of:

(i) *TWX designation.* Example: Tornado: Tornado Situation Report No. 2.

(ii) *Nature of emergency.* Location, extent and amount of damage, and estimated duration.

(iii) *Corps.* Requests for Corps of Engineers assistance; nature of action

taken if any; personnel and resources committed.

(iv) *Recovery efforts.* Those actions by State and local interests; forces, supplies, and equipment committed; adequacy of capability to cope with situation.

(v) *Military assistance.* Description of Army, Navy, Marine Corps, Air Force, personnel forces, supplies and equipment committed.

(vi) *Other.* Activities by Red Cross and other Federal Agencies.

(g) *Collection of data and post flood reports.* Collection under this heading should usually be completed within 30 days of the emergency.

(1) *Scope of data collection.* Data collection during and after flood events will be limited to that data which is unique to the basin and would be irretrievably lost if not collected during or shortly after the flood. The following are types of data that are acceptable to be collected under Pub. L. 84-99: photography (aerial and ground), documentation and survey of high water marks, preliminary flood damage assessments, basic hydrologic data not obtainable under other programs or from other agencies. These activities should be performed during and shortly after the actual flood. The scope of data collection does not include detailed flood damage surveys, hydrologic studies, compilation of comprehensive flood data, sedimentation surveys, or detailed frequency analysis.

(2) *Post flood report.* Following a Category A or B flood causing major damage, a letter report therein, will be submitted to Division, and in duplicate to HQDA (DAEN-CWO-E). These reports are to be prepared in two separate Sections. The total report will be completed within 3 months of the time of disaster, include the statement of final cost and be submitted with the request for reimbursement for costs incurred in the operation. All activities costing in excess of the $10,000 District Engineers authority, must be approved by higher authority prior to initiation.

(i) *Section 1—summary of operations.* This section should be prepared by the EOM as soon as practicable after the flood fight is complete and recovery operations are substantially underway. It should be a brief summary of the disaster operation and interagency coordination, which can be used independently from Section 2, for improving future operations. Section 1 is not intended to cover the entire recovery operation, but rather to summarize the coordination and initiation of the response. It should include discussion of the type of assistance provided, coordination with FDAA and other agencies, effectiveness of the response, strengths and weaknesses of the operation, specific problems and suggested solutions, general appraisal, comments, conclusions and recommendations. Section 1 may be submitted separately from Section 2, if desirable.

(ii) *Section 2—data summary.* This section should include: summarization of information and data pertinent to Pub. L. 99 emergency flood control activities, presentation of principal supporting hydrologic information and complete bibliography of the pertinent data collected and filed in District office, evaluation of stage reductions effected at key stations by flood control reservoirs operated by the Corps or by other agencies. It is not necessary to include isohyetal charts, high water profiles, complete meteorological history of storms, or data that are obtainable from other agencies. However, reference should be made to pertinent data that can be obtained from other agencies, such as U.S.G.S. and NWS.

(h) *Disaster recovery report.* Special operations of large magnitude under Pub. L. 84-99 and Pub. L. 93-288 usually involve post-disaster recovery activities. Disaster Recovery Reports to Divisions with information copy to HQDA (DAEN-CWO-E) Washington, D.C. 20314 will be in the format shown below. These reports will replace sitrep reports upon discontinuance of the disaster fight and when recovery operations begin. (See Subpart H of

this part for Corps activities for FDAA Pub. L. 93-288.)

SAMPLE FORMAT FOR DISASTER RECOVERY REPORT

RR 011800Z Sep 77
FM: DISTENGR Seattle WA //NPSOP-NF//
To: HQDA WASHDC //DAEN-CWO-E//
UNCLAS
Subject: Disaster recovery report, Western Washington, report No. 1
A. (As Required)
1. Summary of Contracts under Pub. L. 93-288:

	No. contract	Total contract amount	Percent complete
Snohomish county:			
(A) Debris	2	$450,000	24
Public building	1	74,000	50
Subtotal	3	524,000	30
Skagit county:			
(B) Protective work	1	125,000	15
Misc. (aerial photo)	1	15,000	100
Subtotal	2	140,000	20
Total	5	664,000	30

2. Summary of Rehabilitation (Code 300) work under Pub. L. 84-99:

	No contracts (jobs)	Total contract (job) amount	Percent complete
County:			
Snohomish	4	$325,000	25
Skagit	3	125,000	30
Whatcom	2	80,000	50
Total	9	530,000	25

3. Number of Corps personnel engaged in post-disaster work:

District	Civilian	Military
Pub. L. 84-99:		
NPS	21	3
NPP	5	1
NPW	3	0
Total	29	4
Pub. L. 93-288:		
NPS	43	2
NPP	10	0
NPW	2	0
Total	55	2

District	Civilian	Military
4. Number of contractor personnel engaged in post-disaster work:		
Pub. L. 84-99:		
Washington		55
Oregon		
Total		78
Pub. L. 93-288:		
Washington		74
Oregon		28
Total		102

5. A brief written summary of major activities and significant events.

Subpart E—Rehabilitation Code 910-300

§ 203.51 Authority.

(a) *Chief of Engineers Authority.* The Chief of Engineers has authority to develop standards and criteria for rehabilitation of any flood control work or Federally authorized shore protection threatened or damaged by flood or unusual coastal storm.

(b) *Authorization of rehabilitation work.* Authorization and funding of recommended rehabilitation projects will be from HQDA (DAEN-CWO-E) Washington D.C. 20314. District Engineers are authorized to undertake investigations of flood control works damaged by flood, and Federally authorized shore and hurricane protection projects damaged by coastal storm, to determine the necessary emergency repairs.

(1) The District Engineer will investigate requests for assistance received from non-Federal interests and will either submit a letter report to the Division or will take unfavorable action, without consulting higher authority. Information copy of unfavorable action on a request for assistance will be furnished to Division Offices and HQDA (DAEN-CWO-E) Washington, D.C. 20314.

(2) When approving authority has been delegated by the Chief of Engineers to a Division Engineer under conditions requiring expedited action, the Division Engineer may authorize individual rehabilitation projects, define the terms of non-Federal par-

ticipation, and approve project cost estimates. The Division Engineer authorizing rehabilitation projects under delegated authority will furnish an information copy of that action, and the district report, to HQDA (DAEN-CWO-E) Washington, D.C. 20314.

(3) In the absence of delegated authority, the Division will review Districts rehabilitation reports to determine if work is applicable under the authority of Pub. L. 84-99 and if appropriate will forward the request with recommendations to HQDA (DAEN-CWO-E) Washington, D.C. 20314 for necessary action.

§ 203.52 General.

(a) *Scope of rehabilitation.* Pub. L. 84-99 authorizes repair and restoration of any flood control or Federally authorized hurricane, or shore protective work to insure its continued function. From this point on, the terms "works" will be used to denote any flood control project or Federally authorized shore protection project. Modification of works to increase the degree of protection or to provide protection to a larger area is beyond the scope of work of Pub. L. 84-99. Such major modifications unless accomplished at non-Federal expense, require Congressional authorization and appropriation, or approval under special continuing authorities.

(b) *Effectiveness of rehabilitation.* It is general policy that rehabilitation incorporating any necessary modifications of works will be undertaken only when an adequate degree of damage prevention will result. The rehabilitation will normally be designed to provide the same degree of protection as provided by the original structures. If improvements necessary for preserving the integrity of the protective work are incorporated, they will be included in the project subject to appropriate limitations of Federal cost, as described in § 203.60. Other improvements may be included at non-Federal cost. Once a higher degree of protection has been justified, the Federal project cost limitations and resulting effects on maintenance costs will be clearly explained to the non-Federal interests.

(c) *Maintenance deficiencies.* Rehabilitation under Pub. L. 84-99 will not be applied to works which, as a result of poor maintenance, have deteriorated to the point where substantial reconstruction is required. No emergency funds will be expended for rehabilitation, even though built or previously repaired by the Corps of Engineers, if non-Federal interests are delinquent in meeting their maintenance commitments. All deficient or deferred maintenance outstanding when damage occurs, will be accomplished by or at the expense of the responsible non-Federal interest, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the corps corrects accumulated deferred maintenance, the estimated deferred maintenance cost will be included as contributed funds. This policy does not preclude furnishing flood fight assistance in an emergency.

(d) *Release of information.* As indicated in ER 1165-2-101, the findings and recommendations of the reporting officers in reports or studies undertaken pursuant to special continuing authorities are considered to be of an internal nature and not appropriate for release to the public pending final approval or disapproval by higher authority. Accordingly, care should be taken not to release information before approval is granted by higher authority on Pub. L. 84-99 requests.

(e) *Time limitation for rehabilitation reports.* The District Engineer will submit post flood disaster rehabilitation letter reports to the Division Engineer within 90 days following the declaration of a major disaster by the President. If no Presidential declaration is made, the Division Engineer will determine the commencement of the 90 day time period after the flood incident, for report submissions. When warranted, the Division Engineer may extend the time limitation(s) not to exceed an additional 30 days.

(f) *Rehabilitation of flood control structures.* Repair of works to be accomplished under the category "Rehabilitation, Code 910-300" will be initiated within 60 days following approval by higher authority. An extension of this can be granted by the Division Engineer.

(g) *Requirements for non-Federal cooperation and participation.* See Appendix C of this regulation.

(h) *Contributed funds.* See Appendix C of this regulation.

(i) *Military installation repairs.* Rehabilitation at military installations may not be acomplished under Pub. L. 84-99 authority. AR 415-15 for the Army, and AR 415-11 (AFR 88-3A), for the U.S. Air Force, provides authority for emergency work at military installations. The following references also provide for rehabilitation work at military installations.

(1) 10 U.S.C. 2673.

(2) Section 103 of Pub. L. 89-568.

(3) 10 U.S.C. 2674.

§ 203.53 Restrictions.

(a) *Restriction to flood control works.* Structures built for channel alignment, navigation, recreation, fish and wildlife, land reclamation, drainage, or to protect against land erosion which are not designed and constructed to have appreciable and dependable effects in preventing inundation by irregular and unusual rises in water level, are not classed as flood control works, and are ineligible for Pub. L. 84-99 rehabilitation. Exception may be made for bank protection works and river control structures constructed by the Corps.

(b) *Non-flood related rehabilitation.* Rehabilitation of flood control structures damaged by occurrences other than floods or coastal storms is not authorized under Pub. L. 84-99.

§ 203.54 Environmental impact statements.

Emergency flood control, shore protection, and disaster recovery actions performed by the Corps of Engineers under Pub. L. 84-99, Pub. L. 93-288, and section 14 of the 1946 Flood Control Act (Emergency Bank Protection), are excluded by ER 1105-2-507 from required preparation of environmental impact statements. No action performed pursuant to these authorities, that has the effect of restoring the facilities substantially as they existed prior to the disaster, shall be deemed as major Federal action significantly affecting the environment. The influence of major rehabilitation (Code 910-300) upon the environment, however, must be considered. This includes consideration of endangered species (Pub. L. 93-205) and archeological sites (ER 1105-2-12). An environmental assessment will be performed and retained in the project files. The total number of major rehabilitation projects determined during the quarter that do not have a significant impact on the environment will be noted on the quarterly submission of the Environmental Impact Statement Schedule.

§ 203.55 Permits.

For emergency activities performed under Pub. L. 84-99 and Pub. L. 93-288 involving work subject to the provisions of section 404, Pub. L. 92-500, the procedures provided for under "Nationwide Permits" outlined in ER 1105-2-401 will be followed. In those cases not covered by nationwide permits, the District Engineer should accomplish a section 404 evaluation and issue public notice, as required by the reference above unless he determines that delays caused by such requirements will result in unacceptable risks to health, life or property, or severe and unacceptable economic losses. The District Engineer's determination that all or part of the section 404 evaluation be excluded should be justified and documented in the request for Pub. L. 84-99 funds. Once a determination has been made and documented to exclude all or part of the section 404 evaluation, the District Engineer should accomplish the section 404 evaluation to the extent practicable if unanticipated delays in accomplishing the work result. The District Engineer's determination should be addressed in paragraph 10 of the rehab. letter report.

§ 203.56 Coordination with Federal agencies.

(a) *General.* Emergency rehabilitation of agricultural levees will be coordinated with the Department of Agriculture local conservation repre- sentative. If the President has determined that disaster assistance is also warranted under Pub. L. 93-288, coordination with the concerned FDAA Re-

gional Director will be accomplished to prevent duplication of coverages.

(b) *Coordination with FDAA.* Following a Presidential declaration of a major disaster or emergency under Pub. L. 93-288, FDAA Regional Directors will be informed of any applications pursuant to Pub. L. 84-99. Requests for work beyond the authority of Pub. L. 84-99 will be coordinated with FDAA regional offices to obtain determination of applicability of Pub. L. 93-288. The applicant will be informed of actions taken.

(c) *Coordination with the Department of Agriculture Programs (USDA)*—(1) *Coordination.* Consideration should be given to assistance available on a cost-share basis to individual farmers and ranchers, or organized groups, through USDA programs affecting farm levees and other works. A general knowledge of the various USDA programs is essential for investigative and review personnel when agricultural areas are affected. Development of a justified rehabilitation project under Pub. L. 84-99 may proceed despite knowledge that participating non-Federal interests may later attempt to secure reimbursement for all or part of their participating effort from another Federal agency. The agency concerned will be kept informed of Corps of Engineers action by the Appropriate Division or District Engineer. In addition to coordination on the above agricultural conservation program coordination may be needed with the Soil Conservation Service (SCS), State representative, regarding any affected projects of the SCS or constructed under Pub. L. 83-566 (Watershed Protection and Flood Prevention Act of 1954), as amended. In addition, applications for repair of agricultural levees will be checked with the State Agricultural Stabilization and Conservation Service (ASCS), or County ASCS Office, to determine if the requested work should be considered and processed as an emergency conservation measure under a current or forthcoming emergency program administered by the ASCS with engineering assistance from SCS.

(2) *Restriction on eligibility.* Any flood control works previously constructed, modified, or repaired with financial assistance from the USDA, whether through Agricultural Conservation Program Service (ACPS), or Soil Conservation Service (SCS), should not be repaired by the Corps of Engineers, unless there is strong justification for it. The applicability of the Corps emergency rehabilitation authority under Pub. L. 84-99 will be considered only if appropriate representatives of the USDA have first ruled that their authority is not applicable. In that event, consideration of a rehabilitation request will be under the same criteria as for other requests.

§ 203.57 Determination of economic justification.

(a) *General.* The economic analysis will be of sufficient detail to determine if benefits exceed costs. All previous work on project including Pub. L. 84-99 rehabilitation will be considered sunk costs and will not be used in the economic justification. A benefit-cost ratio need be furnished only on those analyses where detailed evaluation is necessary to determine economic feasibility. In those cases analyses will utilize the current Federal discount rate for Water Resources Evaluation. For projects of minor costs, such determination may be expressed in general terms. As warranted by the size of the project, and for dams constructed by other agencies, an economic analysis will be prepared in such detail as appropriate. Comparison of benefits to costs may be between rough estimates of annual benefits and annual economic costs (estimated damages prevented divided by maintenance and average economic charges).

(b) *Specific data.* Economic data in the letter report should include:

(1) Area protected.

(2) Land use of protected area.

(3) Estimated damages in average annual dollars, if rehabilitation is not performed.

(4) Average annual cost including operation and maintenance of total project.

(5) Number and average value of residences in the protected area.

(6) Project life and degree of protection.

(c) *Project life.* For analysis of rehabilitation work, project life will be determined as described below:

(1) *Federal Projects.* Life of the type work as described in ER 1105-2-250 less the number of years since maintenance of the completed project was assumed by local interests.

(2) *Non-Federal Agricultural.* Ten years or the degree of protection provided, whichever is less.

(3) *Non-Federal Developed Area.* Fifty years or the degree of protection provided, whichever is less.

(4) The project life should not exceed the remaining physical life of the project. Any exceptions to the above will require extraordinary justification in the letter report.

(d) *Examples.* The following are examples of letter report analysis.

(1) About 3,000 acres are protected by the Pelucia Creek levees. At least 80 percent of this area is intensively farmed in cotton and soybeans. Annual agricultural flood damages without the levee system are about $10 on the current discount rate and a 10 year project life. There are 25 residences in the area with an average value of $12,000. Damages would greatly exceed the cost of rehabilitation and no further economic analysis is considered necessary.

(2) The Tchula Creek levee protects 1,000 acres from a five year frequency flood. The land use within the area is 40 percent grassland, 20 percent soybeans and 40 percent woodland. Four residences are in the area with an average value of $10,000. Analysis is based on the current discount rate. Annual benefits for the rehabilitation work are listed below:

Physical damages prevented:	
Agricultural crops	$6,400
Residential structures	400
Emergency costs prevented	2,300
Total annual benefits	9,100
Annual costs:	
First cost	30,000
Interest and amortization at 6⅞ percent	7,200
Operation and maintenance	300
Total annual cost	7,500

The benefit cost ratio of the proposed work is 1.2 to 1.0.

(e) *Other.* Data necessary for backup of economic analysis should be retained in the project file but need not be included in the letter report. Benefit analysis will be provided only for the recommended alternative. For projects of marginal justification, sufficient detail to support a favorable recommendation should be included in the report.

§ 203.58 Project development.

In early negotiations, project sponsor should be informed (a) of recommended modifications to existing protective works and incremental costs, and (b) that the apportioned cost must be borne by the non-Federal interests. The project sponsor should be further informed that final determination of non-Federal participation will be made by higher authority. In reporting on this aspect of a proposed project, recommendations will take into account the need for expeditious action, the history of previous efforts by non-Federal interests, and other pertinent factors if variations are recommended. In this connection, the fact that proposed modification conform to an authorized protection project on which construction has not been initiated, is not justification for initiation of construction with emergency funds.

§ 203.59 Special considerations and alternative methods of rehabilitation.

(a) *General.* Alternative methods for providing equivalent protection may be employed provided the estimated Federal costs under such procedures are not in excess of those for rehabilitation of the existing works. Alternative methods such as levee setback, revetment, bulkheads, or seawalls should also be considered to ensure the integrity of the works. These alternatives must be beyond the scope of non-Federal maintenance responsibility or capabilities. Any increase in Federal cost resulting from non-Federal preference of an alternative, other than the least expensive when all costs are included will be borne by the non-Federal interests.

(b) *Spoil banks.* Spoil banks created by channel or drainage ditch excavation may be considered flood control works under Pub. L. 84-99 if they constitute a sufficiently integrated levee

system in grade, alignment, and other characteristics with appreciable and dependable flood control effects. Maintenance of these structures will conform to requirements stated in § 203.52(c).

(c) *Channels.* Restoration of the pre-flood hydraulic capacity of Federally authorized channel improvement projects is authorized under Pub. L. 84-99 when flood waters have deposited debris and silt beyond non-Federal local maintenance capabilities. When not undertaken immediately after a flood event, restoration of natural river or drainage channels to preserve federally constructed flood control works can be considered under Advance Measures (see § 203.84(b)(3)).

(d) *Bank protection vs. levee setback.* When considering construction of bank protection to avoid abandoning a levee on its present alignment (which is threatened by stream erosion), alternative plans will be compared on an engineering and economic basis. Requests by non-Federal interests will be evaluated to determine the least Federal cost. No commitment will be made to non-Federal interests regarding future restoration of the levee to the previously existing alignment. Any extra Fderal costs anticipated to protect a levee on existing alignment will be borne by the non-Federal interests with comparison based on the following evaluation procedures:

(1) Same standard of flood protection is assumed (costs attributable to an increased standard will be separately considered).

(2) Respective economic lives are estimated, and all costs compared on an annual basis.

(3) Levee setback cost estimate will include costs of engineering and construction; relocation of roads, utilities, right-of-way exclusive of any allowances for land severance or depreciated value of land not in right-of-way.

(4) Bank protection cost estimate will include costs of engineering and construction plus cost of additional right-of-way; and cost of maintenance.

(5) Include in both estimates, any other associated costs to non-Federal interests.

(e) *Deliberate levee cuts.* Repair of deliberate levee cuts is a non-Federal responsibility and should be accomplished at non-Federal expense. Variation from this general policy will be considered where the purpose of the cut was to preserve existing flood control works.

§ 203.60 Flood control dams constructed by non-Federal agencies.

Rehabilitation of flood related damages to these structures may be authorized. Repairs will be limited to project features having a direct flood control function.

§ 203.61 Specific projects under Pub. L. 84-99.

(a) *Federally authorized flood control projects.* (1) Modification of Federally constructed works may be accomplished in conjunction with post flood rehabilitation at Federal expense when:

(i) Non-Federal maintenance cannot be effectively accomplished due to changed conditions or functional inadequacy.

(ii) Further serious damage to the project cannot be prevented without installation of riprap or other preservative construction.

(iii) Use of emergency funds for project modification will produce significant savings of future maintenance cost.

(2) *Flood control works under construction by the Corps.* Rehabilitation of these structures will normally be accomplished with regular project construction funds. Repair of units completed and accepted from the contractor can be considered under Pub. L. 84-99 authority when project construction funds are not available.

(3) *Flood control works constructed, operated, and maintained by the Corps.* Rehabilitation of those flood control works maintained as a Federal responsibility will normally be accomplished with regular project maintenance funds. In the case of major flood damage necessitating immediate repair, and when pertinent project funds are not available for work that cannot be deferred, consideration will be given within OCE to authorizing post flood work under authority of Pub. L. 84-99. In the case of reservoir

and multiple-purpose projects, consideration will be limited to component structures having a direct flood control function.

(b) *Non-federally constructed flood control works.* In conjunction with post flood rehabilitation, modifications designed to preserve the integrity of these structures may be accomplished at additional Federal expense. The added Federal cost is limited to:

(1) Not more than one-third of the estimated Federal cost of rehabilitation to preflood conditions alone.

(2) Federal cost limit of $50,000. Costs of preservative modifications in excess of the controlling Federal cost limitation above will be borne by the non-Federal interests. The entire cost of modifications for providing an increased degree of flood protection or protecting an additional area will be a non-Federal cost.

(c) *Secondary flood control works.* It is general policy that Federal funds should not be expended for post flood repair or restoration on structures which provide a low degree of protection and are constructed riverward of the primary flood control system. Exception of this policy is when the low level structure provides protection to human life and is economically justified.

(d) *Nonconforming flood control works.* Any non-Federal flood control work constructed without having the necessary permit(s) will not be rehabilitated by the Corps under Pub. L. 84-99.

§ 203.62 Transfer of completed work to local interests.

This will be in accordance with Appendix C of this regulation.

§ 203.63 Rehabilitation investigations.

(a) Following a flood event, a survey of damages to flood control and federally authorized hurricane or shore protection works should be undertaken as soon as water levels permit. This survey would expedite the processing of requests and applications from non-Federal interests and avoid repetitious investigations in the same area.

(b) *Scope of investigations.* On-site investigation, engineering studies, and plans for rehabilitation should be held to the minimum necessary for evaluation of requested work. Where appropriate, modified existing drawings or aerial photographs should be used in lieu of finished drawings. In general, consideration should be given to the size of the job in determining a reasonable allocation for preliminary costs. The District Engineer has standing obligation authority up to $2,500 per project under the category "Rehabilitation" Code 910-300, following a flood event.

§ 203.64 Rehabilitation report.

(a) *Letter report.* Separate letter reports should be furnished for each individual project. The report should describe the damages and proposed repairs to provide the same degree of protection that existed prior to the flood event and present an evaluation of the effectiveness of the proposed repair. When improvements necessary for preserving the integrity of the works are incorporated, these items and associated added costs will be broken down into Federal and non-Federal costs of work items, including allocations for Engineering and Design, and Supervision and Administration (including overhead). The appropriate limitation on the added Federal cost for necessary modifications will be shown. The report should adhere to the following format. If the main paragraph does not apply, retain it in the report and label it "Not Applicable".

(1) *Project background.* (i) Authorizing legislation (Fed Projects) and source of funds.

(ii) Construction cost.

(iii) Construction start and completion date.

(iv) Date and cost of recent modifications.

(v) Project purpose (recreation, reclamation, flood control, shore or hurricane protection, etc.).

(vi) Location (river, county, State).

(vii) General location drawing.

(2) *Disaster incident.* (i) Description of flood event that caused the damage.

(ii) Frequency of storm—duration of flooding.

(iii) Comparison of historical floods.

(iv) Date of incident.

(v) Reference to situation reports made to DAEN-CWO-E.

(3) *Non-Federal cooperation and participation (see Appendix C).* (i) Quality of past maintenance and annual costs by non-Federal interests.

(ii) What is the estimated amount of any unperformed maintenance prior to the damage? If any, non-Federal interests are required to pay cost involved.

(iii) What participation in goods and services are non-Federal interests willing to provide?

(iv) Discussion of desirable non-Federal cooperation and participation and willingness of non-Federal interests to furnish the necessary assurances.

(4) *Federal involvement.* (i) Efforts by Corps under Pub. L. 84-99 or other authority (dates, amounts, reference authorizing letters, etc.).

(ii) Efforts by other Federal agencies.

(iii) Coordination with Federal agencies (FDAA, USDA, etc.).

(5) *Damage description.* (i) Cause of damage.

(ii) Description of physical damage to project feature (dimensions).

(iii) Photographs of damaged areas (before and after if possible).

(6) *Alternatives.* List alternatives with cost and other basic considerations.

(7) *Proposed work.* (i) Recommended course of action and reasons for course of action.

(ii) Schedule of work to include completion of plans and specs, advertisement period, contract award, and estimated completion date.

(iii) Plan, single sketch or other graphic presentation of reasonably large scale, showing cross-sections where pertinent, and relationship of damaged areas to overall flood control system (finished drawings are not required).

(8) *Economic justification (see § 203.56).* (i) General statement of project economics.

(ii) Benefit to cost ratio and computations if necessary.

(9) *Environmental effect.* (i) Statement on effect of work on environment.

(ii) Environmental Assessment or required Negative Assessment on file in the District office.

(iii) Sec. 7 of the Endangered Species Act of 1973 (Pub. L. 93-205) (16 U.S.C. 1531-1534). (If major rehabilitation project.)

(iv) ER 1105-2-12, "Archeological Investigations and Salvage Activities." (If major rehabilitation project.)

(10) *Permits required.* (i) District engineer's decision on applicability of permit requirements.

(ii) Justification and documentation that section 404 evaluation has been considered.

(11) *Request for authority, work allowance, funds.* (i) Request for authority/increase in authority.

(ii) Request for approval of estimated Federal cost/increase in cost.

(iii) Request for work allowance/increase in work allowance/use of available work allowance.

(iv) Request for funds/transfer of funds.

(v) Civil Works Information System (CWIS) number.

§ 203.65 TWX report.

A TWX report may be substituted for a letter report when mail delivery will cause an unacceptable delay. However, the same degree of field investigation and consideration, although necessarily brief, will be reflected in the TWX report. In addition, appropriate plans or sketches should be telecopied concurrently with the transmission of the TWX report for review.

Subpart F—Emergency Water Supplies Code 910-400

§ 203.71 Purpose.

This chapter provides information, guidance and policy for execution of the Chief of Engineer's authority to furnish emergency supplies of clean drinking water pursuant to Pub. L. 84-99, as amended by section 82(2), Pub. L. 93-251 (88 Stat. 34), dated 7 March 1974.

§ 203.72 Authority.

Pub. L. 84-99, as amended, provides that the Chief of Engineers, in his discretion, is authorized to provide emer-

gency supplies of clean drinking water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality.

§ 203.73 Policy.

Emergency work under this authority will be considered when requested by the Governor of States where the source of water has become contaminated. The contamination may be accidental, deliberate, or caused by natural events. However, loss of the water source or supply is not applicable under this authority. When the emergency water situation becomes known, the involved Division will notify DAEN-CWO-E by telephone.

§ 203.74 Guidance.

(a) The method of furnishing emergency water supplies is not provided for in Pub. L. 84-99, and is left to the discretion of the Chief of Engineers. Any feasible method, including restoration of service from an alternate source when the main source has been contaminated, is authorized.

(b) The scope of work is limited to providing emergency supplies of clean drinking water. The Corps of Engineers role in providing emergency supplies is a temporary measure until the locality is able to assume its responsibility. The locality is required as soon as possible to actively initiate measures required to resolve the emergency situation.

(c) The authority encompasses all situations involving contaminated sources of drinking water, whether caused by flooding or otherwise.

(d) Failures in the purification or distribution systems are not eligible. A loss of supply or diminishing of the source, due to such things as an earthquake or drought, does not in itself justify Corps activity.

(e) The contamination must cause or be likely to cause a substantial threat to the public health and welfare. An identifiable and defined threat of impairment to the public health and welfare is considered necessary. The allowable contaminant levels in drinking water are set forth by the Environmental Protection Agency pursuant to the Safe Drinking Water Act (Pub. L. 93-523). There is no requirement that actual sickness exists from contaminated water to invoke the authority, but a clear threat must be established.

(f) Contamination which causes a loss of palatability, but poses no material threat to public health and welfare is not eligible for Corps action under this authority.

(g) Contamination, such as by bacteria, which can be reduced to a safe level by the users boiling the water would not be eligible for Corps assistance.

(h) Contamination by natural intrusion over a period of time, which are known to be occurring and which may accumulate in sufficient concentrations to pose a future health threat, but which have not yet reached the level of a present hazard is the responsibility of the locality to correct.

(i) Contamination which, while posing a substantial threat to health and welfare, can be corrected by local authorities or other Federal authorities, or other appropriate means before emergency supplies are deemed necessary will not be eligible for Corps assistance.

(j) A business firm faced with contamination of water used in its process is not eligible. The drinking water used by the people must be affected before Corps assistance can be applied.

§ 203.75 Delegation of authority.

The authority to approve measures under Code 910-400 "Emergency Water Supplies" is delegated to Division Engineers up to $50,000 per incident. District Engineers are delegated authority up to $2,500 for investigation of each request except NED and POD are authorized up to $5,000. Division Engineers have authority to increase District Engineers authority from $2,500 up to $5,000.

§ 203.76 System rehabilitation.

The authority does not require correcting the contamination, or repair of water systems so that clean drinking water supplies become available again.

This is a responsibility of local government and other Federal Programs. Authority is granted, however, to repair the water system in lieu of reverting to a more expensive method of providing clean drinking water. To the extent that a local government can provide water with their own resources, the locality will be excluded from the provision of emergency supplies under Pub. L. 84-99.

§ 203.77 Types of assistance.

The temporary emergency supplies of clean drinking water may be provided through such actions as:

(a) The use of water tank trucks to haul clean drinking water from a nearby known safe source to water points established for local distribution.

(b) Procurement and distribution of bottled water.

(c) Laying of temporary above ground water lines from a nearby safe source of water to the affected community where water points for local distribution can be established.

(d) Installation of temporary filtration.

(e) Temporary use of military, mobile purification units when available.

§ 203.78 Report format.

Separate reports should be furnished for each proposed project. The report should detail all information pertinent to the decision to request emergency supplies of drinking water. The report should cover the items listed below and adhere to the following format with respect to main paragraph and subjects, giving consideration to the general topics listed under each paragraph as appropriate. If the main paragraph does not apply, retain it in the report and label it "Not Applicable."

(a) *Background.* (1) Affected locality and capability.

(2) Requesting governor and State capability.

(3) Cause of contamination.

(4) Documentation of health hazard.

(5) Coordination with others.

(b) *Alternatives considered.*

(c) *Proposed action.* (1) Method of supply.

(2) Estimated cost.

(3) Duration of involvement.

(4) Schedule for implementation.

(5) Permits required.

(6) Environmental consideration.

(d) *Request for authority and funds.*

Subpart G—Advance Measures Code 910-500

§ 203.81 General.

"Advance Measures" consists of those activities performed prior to flooding or flood fight to protect against loss of life and damages to improved property from flooding. This term replaces the terminology "Operation Foresight" previously used to describe large scale joint Federal and non-Federal operations undertaken to prevent forecasted flooding.

§ 203.82 Delegation of authority.

District Engineers, NED and POD are delegated obligational authority up to $2,500 to determine eligibility of each request.

§ 203.83 Eligibility criteria.

(a) *Threat of flooding.* There must be an immediate threat of *unusual* flooding present before advance measures can be considered. The threat may be established by National Weather Service predictions or Corps of Engineers determinations of unusual flooding from adverse conditions. The threat must be of a nature that if action is not taken immediately, damages will be incurred.

(b) *Feasibility.* The proposed work should be temporary in nature, must be designed to deal effectively with the specific threat, and be capable of construction in time to prevent damages.

(c) *Economic justification.* All work undertaken under this category must have a favorable benefit-to-cost ratio.

(d) *Local cooperation/responsibilities* (See Appendix C).

§ 203.84 Areas of application.

Threat of flooding due to:

(a) *Failure of flood protection*—(1) *Federal constructed—locally operated projects.* Work may be undertaken on projects which are in danger of failing

and fulfill the eligibility criteria in § 203.83. Work undertaken may be permanent in nature on a Corps constructed locally maintain project, if time allows completion in time to prevent damages.

(2) *Non-Federal projects.* Flood control work must be technically functional, and designed for a reasonable frequency in order to be eligible.

(b) *Channel obstructions*—(1) *Federal projects.* Channel clearance/dredging to restore the original project design capacity is authorized on Federal channel projects that do not have adequate hydraulic capacity to pass predicted flood flows.

(2) *Non-Federal Projects.* In channels when the hydraulic capacity is not known, clearance work will not be undertaken unless time allows preliminary survey to establish the required capacity. The estimated amount of required additional capacity should be known before beginning any channel work.

(3) *Types of obstructions*—(i) *Ice jams.* Advance measures to remove ice jams should always be coordinated with Cold Regions Research and Engineering Laboratory (CRREL). Direct contact between divisions, districts and CRREL is authorized. The proposed removal operations should have a reasonable chance of success. Consideration should be given to other techniques to prevent flooding such as ice dusting, temporary dikes, sandbagging or other flood fight techniques.

(ii) *Snags/debris.* Snagging and clearing as Advance Measures should be limited to removal of definable snags or debris obstructions where water is predicted to impound causing unusual flooding.

(iii) *Channel deposits/siltation.* Removal of silt, gravel or other channel deposits should only be accomplished only where the hydraulic capacity has been proven by survey to be inadequate to prevent flooding. The provisions of section 404, FWPCA can be waived by the District Engineer if he deems it necessary to expedite the emergency action. (See § 203.55 *Permits.*)

(c) *Snowmelt from abnormal snowpack.* Advance measures undertaken to prevent predicted flooding from heavy snowmelt are appropriate when based on measureable conditions. Snow surveys which relate depth of snow and water content as well as soil moisture content are prepared by the Soil Conservation Service, and serve as a reliable indicator along with NWS forecasts. The use of experimental snow sampling devices or techniques are not appropriate under Pub. L. 84-99 and should be pursued under R&D programs during non-emergency periods.

(d) *Dam failures.* (1) Advance Measures are appropriate to relieve the threat of flooding from dam failures when a structure is endangered by a prediction of unusual inflows which will result in catastrophic failure. The cost of measures to be undertaken should be compared with the projected damages if the dam is allowed to fail. Advance Measures could involve dewatering of the impoundment, controlled breaching, or strengthening of the structure, depending on time available, and costs involved. All work should be ceased when the threat has subsided. Restoration or rehabilitation of the structure is a local responsibility.

(2) The Corps should work closely with State and local interests in situations of probable dam failure, to assist in the formulation of an evacuation plan which defines organization, responsibilities, channels of communication, procedures, warning times, etc. These plans should be formulated in a manner which does not arouse unnecessary alarm or controversy. The Corps may participate in preparation of plans for non-Federal interests on a reimbursable basis.

(e) *Volcanic eruptions.* The authority for a military commander to take immediate action to save human life, prevent human suffering, or to mitigate major property damage or destruction from a disaster condition such as a volcanic eruption is established in Part 502. Advance measures, such as construction of lava deflection barriers or other structures are not eligible under Pub. L. 84-99.

§ 203.85 Advance measures report.

(a) *Initial contact.* When Advance Measures are appropriate and a recommendation is being prepared, initial division contact with HQDA (DAEN-CWO-E) should be made by telephone to apprise the staff of the anticipated request for authority and funds.

(b) *TWX report.* A TWX report is preferable to a letter report since Advance Measures usually require expedited review. However, the use of TWX reporting in no way diminishes the requirement for a comprehensive report as detailed in § 203.85(c). Appropriate sketches, plans or other information not transmittable by TWX will be sent by telecopier concurrently with the TWX transmission. (Use only the DAEN-CWO-E TWX and telecopier numbers.)

(c) *Report format.* Separate reports should be furnished for each proposed project. The report should detail all information pertinent to the decision to request advance measures. The report should cover the items listed below and adhere to the following format with respect to main paragraph and subjects, giving consideration to the general topics listed under each paragraph as appropriate. If the main paragraph does not apply, retain it in the report and label it "Not Applicable."

(1) *Project background.* (i) Authorizing legislation (Federal Projects) and source of funds for non-Federal projects.

(ii) Construction cost.

(iii) Construction start and completion date.

(iv) Date and cost of recent modification.

(v) Project purposes (recreation, reclamation, flood control, shore or hurricane protection, etc.).

(vi) Location.

(vii) General location drawing.

(2) *Summary of conditions causing flood threat.* (i) Past and current meteorological conditions.

(ii) Predicted meteorological conditions (NWS statement).

(iii) Anticipated hydrology.

(iv) Comparison to historical floods.

(v) Predicted time of flooding.

(vi) Other substantiating information.

(3) *Local cooperation and participation.* (i) The nature of Advance Measures often requires that special considerations be included in the local assurance agreement to protect the Federal investment. Consideration should be given to including any activity or input by non-Federal interests as part of the formal agreement to insure timely compliance.

(ii) See Appendix C for further details.

(4) *Federal involvement.* (i) Efforts by other Federal Agencies pursuant to their authorities.

(ii) Efforts by Corps under Pub. L. 84-99 or other authority (dates, amounts, reference outstanding letters, etc.).

(iii) Coordination of Federal agencies (FDAA, USDA, etc.).

(5) *Alternative course of action.* (i) List alternatives considered with cost, and other basic consideration.

(ii) Appropriate sketches.

(6) *Proposed work.* (i) Description and reasons for recommended course of action.

(ii) Plan, single sketch or other graphic presentation of reasonably large scale, including cross section if required.

(iii) Schedule of work items (plans and specs, advertisement period, estimated award, and completion date).

(7) *Anticipated damages without proposed work.* (i) Description of damage.

(ii) Estimated amount of damages.

(8) *Economic justification (see § 203.56).* (i) General statement of project economics.

(ii) B/C computation if necessary.

(9) *Environmental effect.* (i) Foreseeable effect of work on environment.

(ii) Environmental assessment or negative assessment in file.

(10) *Permits required.* (i) DE's decision on applicability of permit requirement to proposed work (section 404, etc.).

(ii) Justification and documentation that section 404 evaluation has been considered pursuant to EC 1165-2-125 (see § 203.55 *Permits*).

(iii) Consider section 7 of the Endangered Species Act of 1973 (Pub. L. 93-205) (16 U.S.C. 1531-1534).

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(iv) Consider ER 1105-2-12 "Archeological Investigation and Salvage Activities."

(11) *Request for authority, work allowance, funds.* (i) Request for Authority/Increase in authority.

(ii) Request for approval of estimated Federal cost-increase in cost.

(iii) Request for work allowance/increase in work allowance/use of available work allowance.

(iv) Request for funds/transfer of funds.

(v) Civil Works Information System (CWIS number).

Subpart H—Corps Activities for FDAA (Pub. L. 93-288)

§ 203.91 General.

The Federal Disaster Assistance Administration (FDAA) acts on behalf of the Secretary, Department of Housing and Urban Development, with authority from the President assigned in Executive Order 11795. FDAA promulgates Federal regulations, orders, circulars, handbooks, and other publications containing guidance governing application of Pub. L. 93-288.

(a) *Definitions.* (1) "Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.

(2) "Major Disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Act, above and beyond assigned emergency services performed by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(b) *Section 306 cooperation.* Section 306 of Pub. L. 93-288 authorizes Federal agencies, when directed, to utilize or lend their resources to provide specific types of assistance. Following are types of assistance the Corps of Engineers may be called upon to render when specifically authorized in mission assignments by FDAA:

(1) Damage assessments and investigations of requests for Presidential declarations.

(2) Damage Survey Reports (DSR's) and Final Inspection Reports (FIR).

(3) Provide direct Federal assistance in the following categories:

(i) Performing on public and private lands or waters any emergency work essential for the protection and preservation of life and property including channel clearance and emergency shore protection.

(ii) Clearing and removing debris and wreckage.

(iii) Making repair to restore to service, or replacing public facilities (including structures of all types) of State and local governments, or private non-profit organizations.

(4) Providing technical advice and engineering services.

(c) *Authority of FDAA Administrator.* The Secretary, Department of Housing and Urban Development (D/HUD) has been designatd by the President in Executive Order 11795 to administer the Federal Disaster Relief Act of 1974, and supplemental legislation, and to prescribe rules and regulations for carrying out provisions thereof. The President reserved the authority to declare major disasters or emergencies. All other authorities pertaining to natural disaster functions pursuant to previous Executive Orders that were transferred by E.O. 11795 to the Secretary D/HUD, have been further delegated, with certain exceptions, to the Federal Disaster Assistance Administration, D/HUD. The FDAA Administrator has been given certain authorities and functions under Pub. L. 93-288, including:

(1) The authority to direct Federal agencies to provide assistance in

"Major Disasters or Emergencies" with or without reimbursement.

(2) The authority to coordinate the activities of Federal agencies in providing disaster relief.

(3) The authority to appoint a Federal Coordinating Officer.

(d) *Authority of FDAA regional directors.* The FDAA Administrator has redelegated certain authorities and functions to the FDAA Regional Directors within their respective areas including: the authority to direct and coordinate with activities of the Federal agencies in providing disaster assistance and to direct any Federal agency to utilize its available personnel, equipment, supplies, facilities and other resources. This authority to issue mission assignments and approve project applications may be redelegated by the Regional Director.

(e) *Federal Coordinating Officer (FCO).* The FCO, appointed by the FDAA Administrator will perform the following functions:

(1) Make an initial appraisal of the types of relief most urgently needed.

(2) Establish such field offices as the FCO deems necessary.

(3) Coordinate the administration of relief.

(4) Take such other action consistent with the provisions of Pub. L. 93-288 and other authority delegated as deemed necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(f) *Emergency assistance.* If the President determines that a major disaster or an emergency exists, he is authorized to use all resources of the Federal Government to avert the disaster or lessen its effects. Division Engineers will be fully responsive to FDAA directives or requests for emergency assistance.

(g) *FDAA—Corps relationships.* Section 302, Pub. L. 93-288, authorizes the President to coordinate the activities of Federal agencies in order to provide maximum mobilization of the available Federal assistance. It also authorizes directing a Federal agency to utilize its available resources in disaster assistance, with or without reimbursement. These section 302 provisions have been delegated to the FDAA Regional Directors. Under those terms, Division Engineers may accept mission assignments, or work directives, from FDAA Regional Directors. Actions taken to manage the mission will be in accordance with existing policies, procedures, authorities, and available resources. Administration and management of Corps personnel, resources, and equipment is the responsibility of the Division. Missions from FDAA during emergency situations are beyond the Corps statutory authority and a mission assignment under Pub. L. 93-288 is required to conduct operations.

§ 203.92 Administrative support of FDAA.

(a) *Emergency support teams.* Regional Directors are authorized to form emergency support teams of Federal personnel to assist in carrying out disaster assistance missions. Team members may be assigned to the field offices, or may be assigned to assist State or local governments in obtaining Federal assistance. Even before a major disaster declaration, the FDAA Regional Director may contact relevant Federal agencies and indicate requirements for members of emergency support teams. In coordination with FDAA Regional Directors, Divisions will designate personnel for assignment to emergency support teams. During pre-disaster threat phase, designated personnel will be alerted for pre-positioning when requested by FDAA to expedite their availability in a major disaster area. Reimbursement by the FDAA for emergency support teams members will be as outlined in ER 11-2-320.

(b) *Corps disaster field office.* Corps disaster field offices estaablished to support Pub. L. 93-288 operations should be close to or collocated with FDAA disaster field headquarters. The same facilities and communications may be utilized. This policy should not over-ride the principle of location close to the disaster area.

(c) *FDAA Regional Disaster Assistance Plans.* When requested by Regional Directors, Corps Managers will participate in the formulation of appropriate sections of the FDAA Regional Disaster Assistance Plans.

(d) *Preliminary assessments.* Regional Directors may assign responsibilities for preliminary damage assessments to Federal agencies by categories of damage most relevant to the agencies' activities. Preliminary field assessments are made for any disaster for which the Governor of a State requests the declaration of a major disaster or emergency. Expenses incurred in providing preliminary field assessments not warranting a declaration are chargeable to FDAA when requested by FDAA.

(e) *Funding.* FDAA directives or requests will be treated as "Reimbursable Work Orders". Refer to ER 11-2-320 for guidance on funding and reimbursement procedures.

§ 203.93 FDAA directives to Federal agencies.

(a) *Nature of Directive.* FDAA Directives or Letters of Request, to Federal agencies specify in general terms the nature and scope of disaster assistance to be provided. Letters of request are supplemented as necessary. FDAA work requests will consist of items eligible under Pub. L. 93-288 in categories designated A through I (HUD Handbook 3300.6). Projects resulting from such FDAA work requests are reviewed with consideration of the interrelated statutory authorities of the Corps of Engineers and other Federal agencies. FDAA directives are framed accordingly, to provide for only supplementary Federal assistance determined by FDAA to be eligible under Pub. L. 93-288.

(b) *Issuance and channeling.* A directive may initially be issued either orally or in writing. An oral directive must be confirmed by a Letter of Request. The Administrator of FDAA submits requests to the Chief of Engineers; FDAA Regional Directors submit requests to Division Engineers. Notification of receipt of any oral request, and an information copy of each letter request and supplements thereto, will be furnished to HQDA (DAEN-CWO-E).

§ 203.94 Responsive action by the Corps.

(a) *Request to the Corps.* Action will be initiated immediately following receipt of valid FDAA directives, whether written or oral. Work will be accomplished in conformance with the FDAA general guidance and directives as well as directives issued pertinent to a specific program of disaster assistance. Consideration will be given to the interrelated statutory authorities of the Corp.

(b) *Support of other Federal agency missions.* Corps resources may be utilized in support of disaster recovery operations assigned by FDAA to other Federal agencies. Written directives which outline the desired support are required from the requesting Federal agency.

(c) *Disaster Operations Coordinator.* During major Pub. L. 93-288 operations involving a disaster declaration covering more than one district area within a Division and State, a COE Disaster Operations Coordinator (DOC) will be appointed by the Division Engineer as he determines necessary, and as may be requested by the Regional Director. The DOC will serve as the liaison officer between the COE, FDAA and other agencies. If the declaration covers areas of more than one division within the State, determining the need for and appointing a DOC will be by mutual agreement of the Division Engineers.

(1) When a large disaster requires declarations in more than one State and more than one FCO has been appointed, a separate DOC will be appointed, if required by the situation, for liaison with each FCO. The DOC will make contact with the FCO and be prepared to be the COE point of contact or liaison officer as required.

(2) The DOC will coordinate all Corps requests for military assistance with the appointed DOD Military Representative. Part 502 now provides that the CONUSA Commander appoint a single DOD Military Representative when a major disaster has been declared. The DOD Military Representative is to coordinate all requests, including those from the Corps, for military assistance. The regulation states that a separate DOD Military Representative will be appointed for each major disaster declaration. Similarly, when requested by the Regional Director a DOD Military Representative may be appointed

when an emergency is declared by the President.

(3) In exceptional cases, OCE may designate a Division Engineer to be in overall charge of the COE disaster operation.

§ 203.95 Permits.

For emergency activities performed under Pub. L. 93-288 involving work which would normally be subject to provisions of section 404, Pub. L. 92-500, the procedures outlined in paragraph 9, EC 1105-2-401 will be followed.

§ 203.96 Completed Corps work.

(a) *Final report.* FDAA requests the preparation of a D/HUD Form 485, Report of Final Completed Work Inspection, for each Damage Survey Report, approved by FDAA under a mission assignment as a project for COE completion as direct Federal assistance. A final joint inspection with the counterpart State agency and local government official is preferred but not mandatory for such projects.

(b) *Maintenance.* Provision of a State or local maintenance assurance is not a mandatory prerequisite to Pub. L. 93-288 work accomplishment. The District or Division Engineer may notify local authorities by letter of the completion date and termination of Corps activity on major projects. The letter should include, as applicable and appropriate, advice as to the further maintenance and improvement, or replacement required in the interest of public safety.

(c) *Records.* Permanent file maps, drawings, and other records of public facility repair or replacement and protective work accomplished, which may be of use for possible future Civil Works or FDAA activities, will be retained.

§ 203.97 State or local government funds.

In the accomplishment of FDAA directed work such as debris removal and repair and restoration of public facilities, the Corps is authorized to accept funds contributed by States or local governments for the inclusion of betterments in work underway. Grants-in-aid, paid to States or local governments by the FDAA for planned accomplishment of recovery work items cannot be accepted by the Corps for undertaking that work at a later date.

§ 203.98 Government liability.

Pub. L. 93-288 includes a specific provision to the effect that the Federal Government shall not be liable for claims based on actions or omitted actions by a Federal employee or agency in providing Federal assistance under Pub. L. 93-288 authority. District Engineers should obtain a copy of the blanket "Hold and Save Harmless" resolution as signed by the public entities before undertaking any construction activities by FDAA or by the Corps directed by a FDAA mission assignment. A sample resolution is contained in Appendix 16 of HUD Handbook 3300.5.

§ 203.99 Final inspection of work by applicants.

The State agency designated by the Governor's Authorized Representative will notify the district when work in a category has been completed. The State agency and district personnel will then schedule a final inspection of completed work normally within 15 days. The Corps inspector will decide who is to make the final inspection but a joint Federal-State final inspection is strongly preferred. If State personnel make the final inspection alone, the Corps is responsible to the FDAA for reviewing the State report, and for its adequacy. The results of the final inspection will be reported on D/HUD form 485. Each COE inspector should review the HUD/FDAA Eligibility Handbook 3300.6 (REV), § 203.84 on pages 7-2 thru 7-5, before taking any actions related to such final inspections.

Subpart I—Procurement During Emergencies

§ 203.101 Administration.

(a) *General.* Nothing in this chapter is to be interpreted as authority to ignore regulatory requirements during periods of emergency. Normal administrative requirements are secondary to expeditious accomplishment of dis-

aster operations when saving time is essential for public health, safety, and preservation of life and property. It is the contracting officers responsibility to insure that required documentation be completed at the earliest practicable time. Accordingly, it is essential that qualified procurement personnel be assigned to the "Corps Team." As necessary therefor, authority and responsibility will be delegated to the maximum and temporary variations from normal command and communication channels will be permitted. The contracting officer must have funds at his disposal to place his procurements rapidly. Control of the funds is essential, but should be at minimum consistent with the emergency.

(b) *Procurement procedures.* Emergency disaster operations will be accomplished using the most appropriate of the various procurement methods authorized. Normal procurement procedures may have to be modified in order to accomplish urgent work promptly. Experience has shown that competitive advertising of emergency work can be compressed into a matter of hours and is a successful method of procurement during emergencies. Negotiated lump-sum and unit price procurement will be used to the extent that the nature of the work and time available will not permit formal advertising. Every advantage will be taken of special and emergency procedures in order to minimize serious delay of urgent operations or the procurement of vital equipment supplies. When time does not permit even modified procedures, immediate authorization to proceed on urgent work pursuant to a letter contract, paragraph (f) of this section may be used.

(c) *Contract negotiation.* Negotiation of Contracts in connection with work covered by this regulation is authorized subject to the restrictions below, without limitation to type, if formal advertising is impractical. Usually the "public exigency" exception under 10 U.S.C. 2304(a)(2) is applicable but on occasion, one of the other exceptions may be appropriate. If required by the exception, a Determinations and Findings meeting the requirements of Part 3, section III, ASPR, must be executed by the Contracting Officer as a prerequisite to each contract negotiation.

(d) *Cost Plus a Percentage of Cost Contracts.* This type of contracting is prohibited by law (10 U.S.C. 2306).

(e) *Cost Plus Fixed Fee Contracts (CPFF).* Except in extraordinary cases, prior approval for use of CPFF contracts under Pub. L. 84-99 and Pub. L. 93-288 shall be obtained from an authority no less than the Deputy Director of Civil Works. The FDAA Regional Director must also approve any CPFF Contracts under Pub. L. 93-288. If the circumstances so dictate, approval action may be effected by telephone with written confirmation following. The contract file shall reflect the means of and person(s) granting such approval.

(f) *Letter Contracts.* Urgent work may be commenced immediately by letter contract under the conditions set out in ASPR 3-408. Prior OCE approval is required if the contracted amount exceeds 50 percent of the estimated definitive contract.

(g) *Bid, Performance and Payment Bonds.* ASPR, Section 10, requires bid, performance, and payment bonds in connection with construction contracts exceeding $2,000 (Miller Act). There is no exception to the law for construction contracts even though performed during emergencies pursuant to this regulation. Disaster recovery operations, however, are ordinarily accomplished under service type contracts for which bid, performance, and payment bonds are not required, although Contracting Officers may require bonds if deemed necessary. The policy is that bid, performance, and payment bonds will ordinarily be required for disaster operations except that a bid bond requirement during initial recovery effort may work a hardship on bidders and the Contracting Officer should consider this possibility.

§ 203.102 Use of local firms and individuals.

Section 310 of the Disaster Relief Act of 1974 (Pub. L. 93-288) provides in part that, "In the expenditure of Federal funds * * * preference shall be given, to the extent feasible and prac-

ticable, to those organizations, firms and individuals who reside or do business primarily in the disaster area." This provision applies to work for and directed by the FDAA, but may be considered also in Pub. L. 84-99 situations if appropriate. During the immediate post disaster operations, contracts for the most urgent requirements will ordinarily be awarded under the negotiation procedures, including letter contracts. In selecting contractors, or distributing requests for proposals, first consideration must be given to those provided preference under the Disaster Act. When negotiation procedures are employed, local contractors can be afforded preference by being permitted to reduce their offers to meet the low proposal, provided that their original offer does not exceed 130 percent of the low proposal. The request for proposals will advise all offerers of the requirement for favoring local firms and individuals.

(a) *Performance of work by contractor.* To assure adequate interest in, and supervision of the entire project, the prime contractor shall be required to perform a significant part of the work with his own forces as determined adequate by the Contracting Officer, but not less than 20 percent. The following clause will be included in the contract:

Performance of Work by Contractor (1965 JAN). The Contractor shall perform with his own organization, work equivalent to at least (words) percent ——— (figures) of the total amount of work to be performed under the contract. If, during the progress of the work hereunder, the Contractor requests a reduction in such percentage, and the Contracting Officer determines that it would be to the Government's advantage, the percentage of the work required to be performed by the Contractor may be reduced; *Provided,* Written approval of such reduction is obtained by the Contractor from the Contracting Officer (ASPR 7-603.15).

(b) *Local labor preference.* All prime contracts awarded, including letter contracts, will include the following clause:

Local Labor Preference. In the performance of work included in the contract, the contractor shall, in procurement of supplies and equipment, awarding subcontracts, and in the employment of laborers and mechanics, give first priority to those residing in or doing business in (————) County(ies). This clause shall be included in all prime contracts offering substantial subcontracting opportunities when there are indications of a high rate of local unemployment (Part 203).

(c) *Subsequent contracting.* Contracts awarded in the later phases of the operation for work such as major rehabilitation of levees, streets, sewage treatment systems, or for new construction, should be awarded under standard procedures. The clauses prescribed above should, however, be included in all prime contracts offering substantial subcontracting opportunities when there are indications of a high rate of local unemployment.

(d) *Disaster area.* The disaster area is considered to be that area and its environs affected by the disaster and as designated by the Administrator, FDAA and published in the FEDERAL REGISTER.

§ 203.103 Contracting officers.

(a) *Appointment.* Authority to appoint Contracting Officers has been delegated no lower than Division Engineers. As a minimum, qualification criteria for Emergency Contracting Officers shall be the same as for Resident Contracting Officers. Pre-planning for emergencies will include the selection of individuals occupying or to occupy positions in which contracting authority would be essential in case of domestic emergency. The contracting authority of such individuals becomes effective only upon the happening of a certain event creating emergency conditions requiring expedited action. Replacement action will be taken promptly when selected individuals become unavailable.

(b) *Requests.* Appointment requests will be made to cognizant Division Engineers for appointment of the selected individuals as Contracting Officers as provided by ECI 1-405(2). Request will state that the contracting authority is for obtaining supplies and services, indicating any exclusions desired,

and monetary limitation. A complete summary of the individual's experience and training will be furnished, as outlined in paragraph 500, Appendix A, ER 1180-1-1. The request will include who is to notify the individual that his special contracting authority is being activated, the means of notification, and the basis for activating the special authority.

(c) *Certificate of appointment.* The certificate will state that such contracting authority will not be exercised by the individual until he is notified by the specified official (usually the District Engineer) and by the specified means, that such emergency authority has been made effective. Copies of all such notifications will be furnished to HQDA (DAEN-ECP) Washington, D.C. 20314, and when the authority reverts to a "stand-by" basis.

(d) *Temporary loan.* A division or district engineer desiring the temporary services of a conditional contracting officer from another office will request that his appointment, activation, and cessation will apply.

§ 203.104 Contracting procedures.

(a) *General.* Policies, procedures, and forms to be utilized will be as prescribed in the Armed Services procurement regulation (ASPR), Army procurement procedure (APP), engineer contract instructions (ECI) identified as ER 1180-1-1, and the provisions of this regulation. Emergency local reproduction of contract forms, as necessary, is authorized. The type and method of contracting will be consistent with circumstances and the nature of the emergency involved. Normally, debris removal is done by the cubic yard rather than equipment rental. The appropriate contract type for such work is found in ASPR, section IV, Part 5. The format is entitled "Contract for Dismantling, Demolition, or Removal of Improvements." However, the alternate format excluding the last two words of the title "of improvements" and adding a payment bond provision (2 pages—cover and page 1) as prepared and distributed by ORD for use in wreck removals is appropriate for this purpose. Of course, the regular titled cover sheet is for use where the demolition or removal of an improvement is involved.

(b) *Rental rates.* Where contracts covering work such as clearing, demolition, etc., involve the hire of equipment, with or without operating personnel, the rental rates agreed upon should be the most reasonable obtainable under the circumstances. In addition, a knowledge of local equipment rental practices and current District records should be used to assist in determining reasonable rates. Reminder: DD Form 1155 (Purchase Order) may be used in lieu of the long form contract (ECI A-301) for a procurement action to lease plant or equipment that does not exceed $10,000 per ECI A-301.1(i).

(c) *Debarred Bidders List.* In addition to insuring that a contract is not awarded to a firm or individual appearing on the DOD joint consolidated list of debarred, ineligible, or suspended firms of individuals (commonly called "Debarred Bidders List"), all proposed awards for work under Pub. L. 93-288 will be checked against the DHUD Debarred Bidders List as well. Such list is available from the Federal Coordinating Officer.

(d) *Publicizing procurement actions.* ECI 1-1050.70 requires certain Congressional and higher authority notification of award of contracts negotiated under the determination of "public exigency."

§ 203.105 Supply procedures.

(a) *Federal property used in major disaster* (Pub. L. 93-288). The FDAA regional director verifies the need, and certifies to the General Services Administration the eligibility of a State to receive Federal property for purposes authorized by Pub. L. 93-288. He determines the amount and type of equipment, material, and supplies required. The GSA Administrator, as directed by the FDAA regional director, locates and determines Federal property available for authorized requirements. When requested by GSA, the available quantities of the desired Federal property, including property in current inventory or property declared to be excess or surplus, held by the Corps civil works or military accounts

not required for current needs of the Corps, and reasonably usable for disaster purposes, will be reported to GSA. Loan or donation of Federal property will be in accordance with GSA procedures, and under conditions stipulated in a "Loan or Donation of Federal Property" agreement between the State, FDAA regional director, and GSA regional administrator. Arrangements for loan or donation will be made by the GSA regional administrator in the following priority order: Surplus property; excess property; and active stocks. Accountability of donated items will be transferred to the State, but will be retained for loaned property.

(b) *Priority of use.* Surplus, excess property, and active stocks will be utilized, preferably in the order listed, in any disaster program when requested by the GSA regional administrator at FDAA direction, or when required for disaster programs accomplished independently by the Corps of Engineers under its authority. The controlling factor will be the urgency of need for the requested or required items.

(c) *Reimbursement and disposition procedures.* Required reimbursement for Corps supplies and equipment made available for disaster programs will, as appropriate, be accomplished in accordance with the provision of ER 775-2-1, ER 1125-2-305, Part 502, and this regulation. Wherever in the above regulations reference is made to working capital funds, this term will be considered to also include civil works emergency supplies and equipment owned by the revolving fund. The disposition procedures are also covered in those references.

(d) *Stock owned by Project "Disaster Preparedness".* Adequate stocks will be provided for special flood emergency requirements. Stock levels will consider that some items are readily purchaseable. Surplus items of any supplies and equipment acquired during a specific flood emergency, with Pub. L. 84-99 funds, may be transferred to project stock by memorandum. Flood fighting stocks will be limited to items required solely from flood fighting and rescue work. Common use items will be held to a minimum. Separate flood emergency reserve stocks will not be established for like items already in warehouse inventory accounts maintained primarily in support of civil works normal missions. Civil works supply policies and procedures set forth in ER 701-300, "Administration and Supervision of Civil Works Procurement and Supply Activities," ER 740-2-1, "Warehousing and Utilization," and ER 1180-1-1 "Engineer Contract Instruction," will be adhered to.

(e) *Stock control.* The adequacy of flood emergency reserve stocks will be reviewed at periodic intervals and adjusted upward or downward as dictated by prudent supply practices. Particular attention should be given to the use or transfer of items in danger of deterioration. If usable, such items or excess stocks will be freely offered and made available on a non-reimbursable basis to other districts.

(f) *Storage charges.* An equitable charge will be made for space used for "Disaster Preparedness" supplies and equipment unless the stored items occupy less than 25 percent of the gross storage space at the facility. In that event there will be no such charge. However, appropriate charges may be made for loading, unloading, checking, sorting, placing in storage, withdrawal, preservation, packaging (time and material) inventory, and special activities totalling $100 annually each.

(g) *Property accountability.* Property accounting procedures established for accountability of property during emergency disaster operations must insure sufficient control to protect the Government against negligence and waste.

(h) *Loan of DLA stock fund material.* Defense Logistics Agency stock of non-expendable equipment and supplies may be loaned to the Corps of Engineers for support of emergency mission. Loans will be made on the basis of material available in the system stocks. No procurement will be make by DLA to satisfy a loan request. Loan conditions are set forth in AR 700-49.

(i) *Forms.* Procurement related forms usually necessary for field operations are listed below. Sets of these forms and any other required locally,

should be assembled, stored, and prominently marked so as to be readily available for the initial days of field operations. For locally reproduced forms, only master sets should be stored. All stored forms will be checked for currency no less than annually.

FORMS FOR PROCUREMENT AND RELATED MATTERS

Form No.	Title
SF-18	Requests for quotations.
SF-19	Invitations, bid and award (construction, alteration, or repair).
SF-19A	Labor standards provisions.
SF-19B	Representations and certifications (construction contract).
SF-20	Invitation for bids (construction contract).
SF-21	Bid form (construction contract).
SF-22	Instructions to bidders (construction contract).
SF-23	Construction contract.
SF-23A	General provisions (construction contract).
SF-25	Performance bond.
SF-25A	Payment bond.
SF-30	Amendment of solicitation/modification of contract.
SF-32	General provisions (supply contract).
SF-33	Solicitation offer and award.
SF-36	Continuation sheet (supply contract).
SF-44	Purchase order-invoice-voucher.
SF-1165	Receipt for cash-subvoucher.
Unnumbered (ASPR Sec. IV, Part 5).	Contract for dismantling, demolition removal of improvements.
DD-350	Individual procurement action report.
DD-783	Royalty report.
DD-1155	Order for supplies or services.
DD-ASPR 1270	General provisions (short form negotiated contract).
ECI A-301	Lease of plant or equipment by Government.
ENG 93	Payment estimate (contract performance).
ENG 2459	Pre-award survey A-E and construction contracts.
ENG 3051	Receiving report.
Unnumbered	Letter contract.

Subpart J—Public Affairs

§ 203.111 Public affairs policy.

(a) The basic policy of the Corps of Engineers is to let the American people, and especially the vicitms of disaster, know what assistance the Corps is providing during and after a natural or man-made disaster.

(b) The Corps of Engineers will take the initiative to inform the public of Corps activities, its authority, and its plan of emergency operations.

(c) Every reasonable form of assistance will be given to the news media in obtaining and disseminating information about Corps of Engineers activities during an emergency.

§ 203.112 Objectives.

(a) To provide a clear description of the Corps' role in supporting rescue, clean-up, or reconstruction work either under the provisions of Pub. L. 84-99 or as an agent for FDAA.

(b) To provide assistance to FDAA.

(c) To establish and maintain close coordination between the Corps of Engineers and the respective Federal, State, local, and other concerned agencies.

(d) To insure the public understands that the Corps of Engineers is taking all necessary action within its authority to protect the public welfare and safety during emergency operations.

§ 203.113 Staffing.

During an emergency, it may be necessary to augment the regular district or division public affairs staff with public affairs officers (PAO) from other districts or divisions. If the division cannot provide sufficient manpower, OCE Public Affairs Office should be contacted to arrange for additional help from other divisions.

§ 203.114 Operating guidelines.

(a) Primary responsibility for keeping the public informed on Corps emergency operations lies at the district level. Assistance will be provided by the PAO in the division or OCE when required.

(b) The district PAO or his representative will maintain close liaison with the EOC, accepting all news media contacts and coordinating and releasing current information on the disaster recovery operation. Regular hours should be established for press conferences, when appropriate, taking into account the respective deadlines of a.m. and p.m. newspapers and radio/television newscasts. The PAO also must evaluate the news value of field reports and select and prepare these items for release, i.e., written re-

lease, telephone release, personal interview.

(c) In addition, one or more public affairs representatives will be assigned full-time at the scene of recovery operations. It will be this representative's responsibility to coordinate and release on-the-scene information and to maintain close contact with the FDAA information officer and information officers of the various agencies and organizations providing disaster relief in the area.

(d) Area engineers and other field personnel authorized to release statements to the news media should confine their statements to activities within their jurisdiction. Requests for information outside their jurisdiction should be referred to the public affairs representative assigned in support of the operation.

(e) Release of information concerning emergency operations being performed under Pub. L. 93-288 will be coordinated with the FDAA's public information officer.

(f) The PAO will provide appropriate input to the post flood report outlined in § 203.44(g).

(g) To assist the Corps team in achieving optimum visibility during emergency operations, the PAO will place emphasis on identification of Corps operations as prescribed in § 203.43(i).

(h) Still and motion picture photographic coverage of recovery operations for both historical record and media use, should be collected under staff supervision of the public affairs representative and made available to the news media as soon as possible. This coverage includes 8 x 10 black and white glossy photographs and 35 mm slides, as well as motion picture footage for TV use. Determination as to whether or not motion picture footage will be assembled and produced as a documentary film will be made by the affected division after consultation with DAEN-CWO-E and approval by DAEN-PAI (App. D, ER 360-1-1). While use of Corps staff photographers is preferred, purchase of photographic coverage, including contracting for photographic services, is permitted. To augment the regular district photographic unit, the division should contact OCE Public Affairs Office to arrange for additional photographers from other divisions.

(i) Video tape equipment from the EOM office of each division will be used to provide rapidly televised reports to OCE and Members of Congress. Videotapes will be expeditiously forwarded to DAEN-CWO-E, and when necessary, special messenger service should be used. If the videotaping capability permits, and if the Corps equipment is compatible with that in use by the news media, the PAO may also use videotapes in disseminating information on the emergency operations effort.

(j) The district PAO will forward local and regional newsclaps covering the disaster and Corps activities directly to OCE Public Affairs (Attn.: DAEN-PAI) on a daily basis along with copaes of any written news releases or brief summaries of verbal news releases.

§ 203.115 Coordination.

(a) District elements must inform the PAO or his representative of newsworthy items promptly to permit rapid transmission to the news media.

(b) Public Affairs Officers in adjacent districts should be alert for opportunities to issue collateral news releases connected with the emergency, in coordination with the District primarily affected.

(c) Whenever more than one district is directly involved in the recovery effort direct communication will be established between public affairs personnel of affected districts. Information should be exchanged on a regular basis and when appropriate a central point of contact will be established for coordinating general news media inquiries. Normally, this point of contact will be the District with the largest recovery effort, although consideration should be given to the location offering the greatest availability to news media outlets (especially the wire service bureaus).

Subpart K—Preservation of Order

§ 203.121 Preservation of order policy.

The Corps of Engineers preservation of order policy in areas of flood, hurricane, earthquake, and other natural disaster or other emergency action is to depend upon duly constituted authority for the control of personnel circulation and vehicular traffic and the maintenance of law and order.

§ 203.122 Preservation of order program.

(a) *Staffing.* The Corps of Engineers Provost Marshal/Security Officer organization at OCE, divisions, and districts will coordinate activities related to the preservation of order in a distressed area.

(b) *Operations.* The Engineer Division Provost Marshal will act as the coordinator between the Corps and law enforcement authorities in the area to guarantee the security of Government property and unimpeded development or employment of the Corps of Engineers task force.

PART 204—DANGER ZONE REGULATIONS

Sec.

204.1 Gulf of Maine off Seal Island, Maine; Naval aircraft bombing target area.
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204.49 Chesapeake Bay off Plumtree Island, Hampton, Va.; Air Force precision test area.
204.49a Chesapeake Bay off Fort Monroe, Va.; firing range danger zone.
204.50 Chesapeake Bay, off Fort Monroe, Va.; restricted area, U.S. Naval Base and Naval Ordnance Laboratory.
204.51 Chesapeake Bay, Lynnhaven Roads; danger zones, U.S. Naval Amphibious Base.
204.51a Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, Virginia Beach, Virginia, naval firing range.
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204.54 Albemarle Sound, Pamlico Sound, and adjacent waters, N.C.; danger zones for naval aircraft operations.
204.55 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.
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204.81 Atlantic Ocean off Georgia Coast; air-to-air and air-to-water gunnery and bombing ranges for fighter and bombardment aircraft, United States Air Force.
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204.86 TRIDENT Basin adjacent to Canaveral Harbor at Cape Canaveral Air Force Station, Brevard County, Florida Danger Zone.
204.90 Straits of Florida; Navy restricted area surrounding Woman Key and Ballast Key.
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204.111 Gulf of Mexico south of Apalachee Bay, Fla.; Air Force rocket firing range.
204.112 Gulf of Mexico, south of St. George Island, Fla.; test firing range.
204.113 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Florida, Drone Recovery Area, Tyndall Air Force Base, Florida.
204.114 Gulf of Mexico south and west of Apalachicola, San Blas, and St. Joseph Bays; air-to-air firing practice range, Tyndall Air Force Base, Fla.
204.120 Gulf of Mexico, southeast of St. Andrew Bay East Entrance, Small Arms Firing Range, Tyndall Air Force Base, Fla.
204.126 Gulf of Mexico, south of Panama City, Florida; underwater experimental areas, U.S. Navy Mine Defense Laboratory, Panama City, Florida.
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204.134 The Narrows and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Florida.
204.135 Gulf of Mexico, south from Choctawhatchee Bay; guided missiles test operations area, Headquarters Air Proving Ground Command, United States Air Force, Eglin Air Force Base, Florida.
204.136 Waters of Santa Rosa Sound and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Florida.
204.175 Lake Michigan; small-arms range adjacent to United States Naval Training Center, Great Lakes, Ill.
204.180 Waters of Lake Michigan south of Northerly Island at entrance to Burnham Park Yacht Harbor, Chicago, Illinois; danger zone adjacent to airport on Northerly Island.
204.187 Lake Erie, west end, north of Erie Ordnance Depot, Lacarne, Ohio.
204.195 Anaheim Bay Harbor, Calif.; Naval Weapons Station, Seal Beach.
204.197 Pacific Ocean in vicinity of San Pedro, Calif.; practice firing range for United States Army Reserve, National Guard, and Coast Guard units.
204.200 Pacific Ocean at San Clemente Island, Calif.; Navy shore bombardment area in vicinity of Pyramid Cove.
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204.201a Pacific Ocean in the vicinity of Point Mugu, Calif.; naval small arms firing range.
204.202 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, California; danger zones.
204.202a [Reserved]
204.203 Pacific Ocean at San Miguel Island, Calif.; naval danger zone.
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204.220 Strait of Juan de Fuca, Washington; air-to-surface weapon range, restricted area.
204.222 Hood Canal and Dabob Bay, Wash.; naval non-explosive torpedo testing areas.
204.222a Bristol Bay, Alaska; air-to-air weapon range, Alaskan Air Command, U.S. Air Force.
204.222b In Bering Sea, Shemya Island Area, Alaska; meteorological rocket launching facility, Alaskan Air Command, U.S. Air Force.
204.222c Blying Sound area, Gulf of Alaska, Alaska; air-to-air gunnery practice area, Alaskan Air Command, U.S. Air Force.
204.223 Pacific Ocean, Hawaii; danger zones.
204.224 Pacific Ocean, Island of Oahu, Hawaii; danger zone.
204.224a Pacific Ocean at Barber's Point, Island of Oahu, Hawaii; danger zone.
204.224b Pacific Ocean at Keahi Point, Island of Oahu, Hawaii; danger zone.
204.224c Marine Corps Air Station, (MCAS) Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range Danger Zone.
204.225a Pacific Ocean at Barking Sands, Island of Kauai, Hawaii; missile range facility.
204.226 Pacific Ocean off Orote Point, Apra Harbor, Island of Guam, Marianas Islands; small arms firing range.

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204.227 Pacific Ocean at Kwajalein Atoll, Marshall Islands; missile testing area.
204.228 Atlantic Ocean off north coast of Puerto Rico; practice firing areas, United States Army Forces Antilles.
204.230 Atlantic Ocean and Vieques Sound, in vicinity of Culebra Island, bombing and gunnery target area.
204.234 Caribbean Sea and Vieques Sound in vicinity of Eastern Vieques, bombing and gunnery target area.

AUTHORITY: Sec. 4, 28 Stat. 362, 40 Stat. 892; 33 U.S.C. 1, 3, unless otherwise noted.

§ 204.1 Gulf of Maine off Seal Island, Maine; Naval aircraft bombing target area.

(a) *The danger zone.* A circular area with a radius of 1.5 nautical miles, having its center just easterly of Seal Island at latitude 43°53'00" and longitude 68°44'00".

(b) *The regulations.* (1) No aerial bombing practice will take place in the danger zone after 5:00 p.m. Mondays through Saturdays, at any time on Sundays, or during foggy or inclement weather.

(2) Vessels or other watercraft will be allowed to enter the danger zone any time there are no aerial bombing exercises being conducted.

(3) No live ammunition or explosives will be dropped in the area.

(4) Suitable Notice to Mariners, by appropriate methods, will be issued by the Commander, First Coast Guard District, Boston, Massachusetts; upon request of the Commandant, First Naval District, Boston, Massachusetts, or his designated agent.

(5) Prior to the conducting of each bombing practice, the area will be patrolled by a non-participating naval aircraft to ensure that no watercraft are within the danger zone and to warn any such watercraft seen in the vicinity by means of a signal that bombing practice is about to take place. The patrol aircraft will employ the method of warning known as "buzzing" which consists of low flight by the airplane and repeated opening and closing of the throttle.

(6) Any such watercraft shall, upon being so warned, immediately leave the designated area and, until the conclusion of the practice, shall remain at such distance that it will be safe from falling projectiles.

(7) The regulations of this section shall be enforced by the Commandant, First Naval District, Boston, Massachusetts, or such agencies as he may designate.

[24 FR 7379, Sept. 12, 1959]

§ 204.1a Gulf of Maine off Cape Small, Maine; Naval aircraft practice mining range area.

(a) *The danger zone.* Within an area bounded as follows: Beginning at latitude 43°43'00", longitude 69°46'00"; thence to latitude 43°38'30", longitude 69°46'00"; thence to latitude 43°38'30", longitude 69°49'30"; thence to latitude 43°42'10", longitude 69°49'30"; thence to the point of beginning.

(b) *The regulations.* (1) Test drops from aircraft will be made within the area at intermittent periods from noon until sunset local time and only during periods of good visibility.

(2) Testing will not restrict any fishing, recreational, or commercial activities in the testing area.

(3) Aircraft will patrol the area prior to and during test periods to insure that no surface vessels are within the area. No test drops will be made while surface vessels are transitting the area.

(4) No live ammunition or explosives will be dropped in the area.

(5) The regulations of this section shall be enforced by the Commandant, First Naval District, Boston, Mass., or such agencies as he may designate.

[36 FR 5218, Mar. 18, 1971]

§ 204.2 Atlantic Ocean in vicinity of Duck Island, Maine, Isles of Shoals; naval aircraft bombing target area.

(a) *The danger zone.* A circular area with a radius of 500 yards having its center on Shag Rock in the vicinity of Duck Island at latitude 43°00'12", longitude 70°36'12".

(b) *The regulations.* (1) No vessel shall enter or remain in the danger zone from 8:00 a.m. to 5:00 p.m. (local time) daily, except as authorized by the enforcing agency.

(2) This section shall be enforced by the Commandant, First Naval District,

and such agencies as he may designate.

[14 FR 5592, Sept. 13, 1949]

§ 204.4 Cape Cod Bay south of Wellfleet Harbor, Mass.; naval aircraft bombing target area.

(a) *The danger zone.* A circular area with a radius of 1,000 yards having its center on the aircraft bombing target hulk James Longstreet in Cape Cod Bay at latitude 41°49′46″, longitude 70°02′54″.

(b) *The regulations.* (1) No vessel shall enter or remain in the danger zone at any time, except as authorized by the enforcing agency.

(2) This section shall be enforced by the Commandant, First Naval District, and such agencies as he may designate.

[14 FR 5592, Sept. 13, 1949]

§ 204.5 Buzzards Bay, and adjacent waters, Mass.; danger zones for naval operations.

(a) *Atlantic Ocean in vicinity of No Mans Land*—(1) *The area.* The waters surrounding No Mans Land within an area bounded as follows: Beginning at latitude 41°12′30″, longitude 70°50′30″; thence northwesterly to latitude 41°15′30″, longitude 70°51′30″; thence northeasterly to latitude 41°17′30″, longitude 70°50′30″; thence southeasterly to latitude 41°16′00″, longitude 70°47′30″; thence south to latitude 41°12′30″, longitude 70°47′30″; thence westerly to the point of beginning.

(2) *The regulations.* No vessel shall at any time enter or remain within a rectangular portion of the area bounded on the north by latitude 41°16′00″, on the east by longitude 70°47′30″, on the south by latitude 41°12′30″, and on the west by longitude 70°50′30″, or within the remainder of the area between 1 November and 30 April, inclusive, except by permission of the enforcing agency.

(3) The regulations in this paragraph shall be enforced by the Commandant, First Naval District, and such agencies as he may designate.

[26 FR 11195, Nov. 28, 1961, as amended at 27 FR 10296, Oct. 20, 1962; 33 FR 10930, Aug. 1, 1968]

§ 204.10 Narragansett Bay, R.I.; prohibited area.

(a) Beginning at a point on the east shore of Conanicut Island at latitude 41°33′15″; thence southeasterly to latitude 41°32′44″, longitude 71°21′17″; thence southerly to latitude 41°32′09″, longitude 71°21′17″; thence southeasterly to latitude 41°31′50″, longitude 71°21′10″; thence southeasterly to latitude 41°31′26″, longitude 71°20′33″ thence easterly to latitude 41°31′27″, longitude 71°20′06″ thence northerly to a point on the southwesterly shore of Prudence Island at latitude 41°35′00″, thence northerly along the southwesterly shore of Prudence Island to a point at latitude 41°35′43″ longitude 71°20′15 5″; thence northwesterly to latitude 41°37′21″, longitude 71°20′48″; thence west to latitude 41°37′21″ longitude 71°21′48″; and thence south to latitude 41°33′54″, longitude 71°21′48″.

(b) The regulations: (1) No vessel shall at any time, under any circumstances, anchor or fish or tow a drag of any kind in the prohibited area because of the extensive cable system located therein.

(2) Orders and instructions issued by patrol craft or other authorized representatives of the enforcing agency shall be carried out promptly by vessels in or in the vicinity of the prohibited area.

(3) The regulations in this section shall be enforced by the Commander U.S. Naval Base, Newport, R.I., and such agencies as he may designate.

[33 FR 4464, Mar. 13, 1968]

§ 204.20 Waters of Atlantic Ocean; National Guard Training Center, Sea Girt, N.J.

(a) *The danger zone.* (1) Beginning at a point defined by the North Range Flagpole along the east shore of the National Guard Training Center at latitude 40°07′20″, longitude 74°01′54″; thence northeasterly to latitude 40°07′38″, longitude 74°01′28″; thence northeasterly to latitude 40°07′40″, longitude 74°00′41″; thence easterly to latitude 40°07′10″, longitude 73°59′04″; thence southerly to latitude 40°06′18″, longitude 73°59′20″; thence westerly to latitude 40°06′25″, longitude 74°01′05″;

thence northwesterly to latitude 40°06'43", longitude 74°01'46"; and thence northwesterly to the east shore to a point defined by the South Range Flagpole at latitude 40°07'07", longitude 74°01'58".

(2) The area described in paragraph (a)(1) of this section will be marked by lighted buoys located at the extreme offshore corners and can buoys at the other corners of the danger zone to be placed and maintained by the Department of Defense, State of New Jersey.

(b) *Regulations.* (1) Range firing will normally take place between the hours of 7 a.m. and 6 p.m. on all Saturdays and Sundays during the period April 1 to November 30 and between the hours of 7 a.m. and 12 p.m., Monday through Friday, during the period January 1 to December 31 annually.

(2) No vessel shall enter or remain in the danger zone during the operation of the firing range, excepting vessels of the United States or the State of New Jersey.

(3) When firing is scheduled or is in progress during daylight hours, a large red flag will be displayed from the flagstaffs on the beach. When firing is scheduled or is in progress during nighttime hours, a blinking and/or revolving red warning light will be displayed from the top of the same flagstaff on the beach. Flagstaffs are located at both the northern and southern boundaries of the training center. Warning flags and lights shall be clearly visible for a distance of at least three (3) miles offshore.

(4) No permits to erect and maintain fish pounds within the zone will hereafter be issued.

(5) The regulations in this section shall be enforced by The Chief of Staff, Department of Defense, State of New Jersey, and such agencies as he may designate.

[33 FR 18155, Dec. 6, 1968; 34 FR 393, Jan. 10, 1969]

§ 204.23 Atlantic Ocean off Cape May, N.J.; Coast Guard Rifle Range.

(a) *The danger zone.* The waters of the Atlantic Ocean within an area described as follows: Beginning at Cape May West Jetty Light; thence 180° true, 800 yards; thence 250° true, 1,325 yards; and thence 335° true to the shore line.

(b) *The regulations.* (1) No vessel shall enter or remain in the danger area between sunrise and sunset daily, except as authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Commander, Third Coast Guard District, or his authorized representative.

[25 FR 12244, Nov. 30, 1960]

§ 204.24 Delaware Bay off Milford Neck; naval aircraft bombing target area.

(a) *The danger zone.* A circular area of one nautical mile radius having its center in Delaware Bay at latitude 38°58'12", longitude 75°17'30".

(b) *The regulations.* (1) Anchoring, trawling, crabbing, fishing and dragging in the danger zone are prohibited during daylight hours.

(2) The regulations in this section shall be enforced by the Commandant, Fourth Naval District, and such agencies as he may designate.

[20 FR 563, Jan. 26, 1955]

§ 204.27 Atlantic Ocean off Wallops Island and Chincoteague Inlet, Va.; danger zone.

(a) *The area.* An area immediately offshore from Wallops Island defined by lines drawn as follows: Beginning at latitude 37°51'30" N., longitude 75°27'30" W.; thence to latitude 37°51'30" N., longitude 75°17'12" W.; thence to latitude 37°43'18" N., longitude 75°29'42" W.; and thence to latitude 37°49'18" N., longitude 75°29'42" W.

(b) *The regulations.* (1) Vessels may enter and operate in the danger zone at all times when warning signals are not displayed.

(2) When warning signals are displayed, all vessels in the danger zone except vessels entering or departing Chincoteague Inlet shall leave the zone promptly by the shortest possible route and shall remain outside the zone until allowed by a patrol boat to enter, or until the danger signal has been discontinued. Vessels entering or departing Chincoteague Inlet shall take the shortest passage possible

through the danger zone upon display of the danger signal.

(3) The intent to conduct rocket-launching operations involving the area shall be indicated by a signal consisting of a large orange-colored, "blimp-shaped" balloon by day and a signal rotating alternately red and white beacon by night. The balloon shall be flown at latitude 37°50'38", longitude 75°28'47" and the beacon shall be displayed about 200 feet above mean high water at latitude 37°50'16", longitude 75°29'07". The appropriate one of these signals shall be displayed 30 minutes prior to rocket-launching time and shall remain displayed until danger no longer exists.

(4) The regulations in this section shall be enforced by the Director, Wallops Station, National Aeronautics and Space Administration, Wallops Island, Va., or such agencies as he may designate.

[31 FR 13445, Oct. 18, 1966]

§ 204.30 Chesapeake Bay; United States Army Proving Ground Reservation, Aberdeen, Md.

(a) *Restricted area defined.* The following indicates the limits of the waters of or adjacent to the Aberdeen Proving Ground, Maryland, and inside of which boundaries will lie the restricted area known as the Aberdeen Proving Ground, Maryland.

(1) Beginning at a point on the westerly side of Chesapeake Bay, at the south side of the mouth of Swan Creek, Harford County, Maryland, the most northerly point of the reservation known as Plum Point; thence southeasterly along the low water mark on the shore of Chesapeake Bay to and across the north entrance of Spesutie Narrows to and thence along the low water mark on the north shore of Spesutie Island to Locust Point; thence along straight line from Locust Point to Turkey Point for a distance of approximately 1,400 yards; thence following a line parallel with and 1,000 yards from the low water mark on the easterly shore of Spesutie Island to a point 1,000 yards due southeast of Sandy Point; thence approximately southwest in a straight line to a point approximately 1,250 yards S. 10°30' W. from Bear Point; thence approximately 9,275 yards S. 51°04' W. to a point in Chesapeake Bay about 1,700 yards due east from Taylor Island Point; thence southwesterly in a straight course, except such variations as may be necessary to include all of Pooles Island to the southwesterly point of Pooles Island, thence in a northwesterly direction to the most southwesterly point of Spry Island, including all of Spry Island; thence northwesterly in a straight line to extreme southerly island off Lower Island Point; thence northwesterly in a straight line through Brier Point to a point in Seneca Creek where this line intersects a straight line which passes through monuments No. 124 and No. 125 on westerly part of Carroll Island; thence northeasterly in a straight line passing through Marshy Point, at the junction of Dundee Creek and Saltpeter Creek, to the intersection of the center line of Reardon Inlet with Gunpowder River, except such variations as may be necessary to exclude any and all parts of the point of land on the westerly side of Gunpowder River about one mile south of Oliver Point; thence northerly along the center line of Reardon Inlet to its intersection with the southeasterly line of the right of way of the Pennsylvania Railroad; thence northeast along the Pennsylvania Railroad following the reservation boundary line to shore of Bush River, and along its western shore to Fairview Point; thence northeast in a straight line across Bush River to concrete monument No. 64, located on the eastern shore of Bush River, south of Chelsea; thence along the eastern shore of Bush River northerly to the mouth of Sod Run; thence by a broken line along the boundary of the reservation to Swan Creek; and thence in a straight line to Plum Point. (The above description may be traced on Coast and Geodetic Chart No. 1226).

(b) *Authority delegated Commanding Officer.* The Commanding Officer, Aberdeen Proving Ground, has been delegated the authority by the Secretary of the Army to designate from time to time by suitably posted bulletins or announcements, the conditions under which the public, including food fishermen and crabbers, may enter re-

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stricted waters of the Aberdeen Proving Ground.

(c) *Penalty.* All persons who enter the restricted waters, except as authorized in this section, without the authority of the Commanding Officer, Aberdeen Proving Ground, Md., are under the terms of the information given above, guilty of a misdemeanor and upon conviction thereon are punishable by a fine not exceeding $500 or by imprisonment not exceeding 6 months.

(d) *Entrance into restricted waters by the public.* Entry into the restricted areas will be governed by the following:

(1) The following water areas are closed to the public at all times:

(i) Supesutie Narrows—all waters north and east of a line between Bear Point and Black Point;

(ii) All creeks except Landerick Creek;

(iii) The water adjacent to Carroll Island which lies between Brier Point and Lower Island Point also known as Hawthorne Cove;

(iv) The waters immediately off the mouth of Romney Creek;

(v) The waters adjacent to Abbey Point Recovery Field more accurately described as area number 16; depicted in Aberdeen Proving Ground Regulation 210-10, Appendix A.

(vi) The waters on the north side of the Bush River from Pond Point to Chelsea Chimney are closed for fishing purposes.

(2) The remainder of the restricted areas will normally be open for authorized use (including navigation and fishing) during the following hours:

(i) Monday through Thursday, 5 p.m. to 7:30 a.m.;

(ii) Weekends, 5 p.m. Friday to 7:30 a.m. Monday;

(iii) National (not State) holidays, 5 p.m. the day preceding the holiday to 7:30 a.m. the day following the holiday.

(3) When requirements of tests, as determined by the Commanding Officer, Aberdeen Proving Ground, or his designee, necessitate closing the restricted areas during the aforementioned times and days, the Commanding Officer, Aberdeen Proving Ground, will publish appropriate circulars or cause to be broadcast over local radio stations notices informing the public of the time and days which entrance to the restricted waters of Aberdeen Proving Ground by the general public will be prohibited.

(4) Authorized use as used in this section is defined as fishing from a vessel, navigation using a vessel to transverse a water area, or anchoring a vessel in a water area. Any person who touches any land, or docks or grounds a vessel, within the boundaries of Aberdeen Proving Ground, Maryland, is not using the area for an authorized use and is in violation of this regulation. Further, water skiing in the water area of Aberdeen Proving Ground is permitted as an authorized use when the water area is open for use by the general public provided that no water skier touches any land either dry land (fast land) or subaqueous land and comes no closer than 200 meters from any shoreline. Further, if any person is in the water area of Aberdeen Proving Ground, Maryland, outside of any vessel (except for the purposes of water skiing as outlined above) including, but not limited to, swimming, scuba diving, or other purpose, that person is not using the water in an authorized manner and is in violation of this regulation.

(e) *Entry onto land and limitation of firing over land.* (1) Entry onto any land, either dry land (fast land) or subaqueous land, within the boundaries of the Aberdeen Proving Ground Reservation as defined in paragraph (a)(1) is prohibited at all times. Provided, the Commander, Aberdeen Proving Ground, is authorized to grant exceptions to this regulation either by written permission or by local regulation. Entry onto the land is punishable as in paragraph (c) of this section.

(2) There are no limitations on test firing by Federal testing facilities at Aberdeen Proving Ground over land belonging to Aberdeen Proving Ground.

(f) *Permits required from the Commanding Officer to set fixed nets in restricted waters.* (1) Fishermen and crabbers desiring to set fixed nets within the restricted waters of Aberdeen Proving Ground Reservation are required in every instance to have a

written permit. A fixed net for the purpose of this paragraph is defined as a pound net, staked gill net, hedge fike net, hoop net, eel pot, crab pot, and all other types of nets fastened by means of poles, stakes, weights, or anchors. Permits to fish and crab within the restricted waters of Aberdeen Proving Ground may be obtained by written application to the Commanding Officer, Department of the Army, Aberdeen Proving Ground, Attention: Provost Marshall Division, Aberdeen Proving Ground, Md. Applicants for permits must state the location at which they desire to set fixed nets and state the period of time for which they desire the permit to cover. Nets placed in the restricted waters are subject to damage by gunfire and bombing, and the risk of such damage will be assumed by the holder of the permit.

(2) Holders of permits for setting fixed nets must comply with the provisions of this part and also with § 206.50(d) of this chapter.

(g) *Identification signs required at each location of fixed nets.* Fishermen and crabbers who have been granted permits to fish or crab within the restricted waters of Aberdeen Proving Ground Reservation with fixed nets must at each location have a stake securely driven at the outer end of the line of nets on which is mounted a sign board which contains their name and permit number. All stakes set within the restricted area established by this regulation will project at least three (3) feet above the surface of the water at all ordinary high stages of the tide. Nets and other fishing and crabbing structures erected will be marked by stakes set at intervals not greater than fifty (50) feet. Fishing and crabbing structures erected in Aberdeen Proving Ground waters will be plainly marked on both ends, and will be lighted with a white light between sunset and sunrise, by and at the expense of the owner.

(h) *Removal of pound net poles and/or stakes.* At the end of the fishing and crabbing season, fishermen and crabbers must remove and haul away from the location all pound nets, pots, poles or stakes used in their operation. Pound net poles or stakes must not be cast adrift after removal.

(i) *Restrictions on fishermen and crabbers.* It must be distinctly understood that holders of permits to fish or crab are not authorized to enter the restricted waters of Aberdeen Proving Ground Reservation outside the hours as announced by the Commanding Officer, Aberdeen Proving Ground. In addition, the privileges granted in this paragraph include no right to land nor to cut or procure pound net poles or stakes on the Aberdeen Proving Ground Reservation.

(j) *Fishing and crabbing with any type of net prohibited in all creeks.* Fishing and crabbing with any type of net is prohibited in all creeks of the Aberdeen Proving Ground Reservation.

(k) *Compliance with Federal, State and county laws required.* The taking of fish and crabs in the waters of Aberdeen Proving Ground Reservation and the setting of and location of nets, in a manner not in compliance with Federal, State, and county laws is prohibited.

(40 Stat. 266; 33 U.S.C. 3)

[13 FR 6915, Nov. 24, 1948, as amended at 32 FR 15673, Nov. 14, 1967; 42 FR 41281, Aug. 16, 1977]

§ 204.32 Chesapeake Bay, in the vicinity of Chesapeake Beach, Md.; firing range, Naval Research Laboratory.

(a) *The danger zone*—(1) *Area A.* A roughly rectangular area bounded on the north by latitude 38°39′55″; on the south by latitude 38°39′09″; on the east by longitude 76°31′03″; and on the west by the shore of Chesapeake Bay.

(2) *Area B.* The sector of a circle bounded by radii of 9,600 yards bearing 31° (to Bloody Bar Light) and 137°30′ (to Buoy N "16 FF"), respectively, from the center at the southeast corner of building No. 3; excluding Area A.

(3) *Area C.* The segment of a circle inclosed by the arcs of two circles having radii of 9,600 yards and 13,200 yards, respectively, and bounded by the extended radii marking the north and south limits of Area B.

NOTE: All bearings referred to true meridian.

(4) *Area D.* A roughly rectangular area bounded on the north by an east-west line through Buoy C "1" at the entrance channel to Fishing Creek; on the south by an east-west line through Buoy C "23" northeast from Breezy Point; on the east by the established fishing structure limit line; and on the west by the shore of Chesapeake Bay.

(b) *The regulations.* (1) No vessel shall enter or remain in Area A at any time.

(2) No vessel shall enter or remain in Area B or Area C between the hours of 1:00 p.m. and 5:00 p.m. daily except Sundays, except that through navigation of commercial craft will be permitted in Area C at all times, but such vessels shall proceed on their normal course and shall not delay their progress.

(3) No fishing structures, other than those presently in established locations, which may be maintained, will be permitted to be established in Area D without specific permission from the Director, Naval Research Laboratory.

(4) The areas will be in use throughout the year, and no further notice is contemplated that firing is continuing.

(5) Prior to the conduct of each firing practice a patrol vessel will patrol the range to warn navigation. "Baker" will be flown from a conspicuous point on the patrol vessel and from a prominent position on shore.

(6) This section shall be enforced by the Commandant, Fifth Naval District, and such agencies as he may designate.

[13 FR 6916, Nov. 24, 1948, as amended at 17 FR 4832, May 28, 1952]

§ 204.36 Chesapeake Bay, in vicinity of Bloodsworth Island, Md.; shore bombardment, air bombing, air strafing, and rocket firing area. U.S. Navy.

(a) *The areas*—(1) *Prohibited area.* All waters within a circle 0.5-mile in radius with its center at latitude 38°10′00″, longitude 76°06′00″.

(2) *The danger zone.* All waters of Chesapeake Bay and Tangier Sound within an area bounded as follows: Beginning at latitude 38°08′15″, longitude 76°10′00″; thence to latitude 38°12′00″, longitude 76°10′00″; thence to latitude 38°12′00″, longitude 76°07′00″; thence to latitude 38°13′00″, longitude 76°06′00″; thence to latitude 38°13′00″, longitude 76°04′00″; thence to latitude 38°12′00″, longitude 76°02′00″; thence to latitude 38°12′00″, longitude 76°00′00″; thence to latitude 38°08′15″, longitude 76°00′00″; thence to the point of beginning, excluding the prohibited area described in paragraph (a)(1) of this section.

(b) *The regulations.* (1) Vessels or other craft shall not enter or remain in the prohibited area at any time unless authorized to do so by the enforcing agency.

(2) No vessel or other craft shall enter or remain in the danger zone when notified by the enforcing authority to keep clear or when firing is or will soon be in progress, except as provided in paragraph (b)(5) of this section.

(3) Advance notice will be given of the dates and times of all firings in the danger zone and such notice will be published in the local "Notice to Mariners." The area will be in use intermittently throughout the year. On days when firing is conducted, firing will take place normally between sunrise and sunset, except that occasional night firing may be conducted between sunset and 12 midnight.

(4) Prior to the commencement of firing each day in the danger zone, surface or air search of the entire area will be made for the purpose of locating and warning all craft and persons not connected with the firing, and a patrol will be maintained throughout the duration of firing.

(5) Warning that ships are firing or soon will be firing in the danger zone will be indicated during daylight by a red flag prominently displayed from a tower off Okahanikan Point at latitude 38°11′45″, longitude 76°05′35″, and at night by a searchlight beam pointed into the sky. Warning that aircraft are firing or soon will be firing will be indicated by the aircraft patrolling the area. All persons, vessels, or other craft shall clear the area when these signals are displayed or when warned by patrol vessels or by aircraft employing the method of warning known as "buzzing" which consists of low flight by the airplane and repeated opening and closing of the throttle.

(6) During hours when firing is in progress or is about to commence, no fishing or oystering vessels or other craft not directly connected with the firing shall navigate within the danger zone, except that deep-draft vessels proceeding in established navigation lanes and propelled by mechanical power at a speed greater than 5 knots normally will be permitted to traverse the area. When ships are firing or soon will be firing in the danger zone, permission for such deep-draft vessels to enter and traverse the area will be indicated during daylight by dipping the red warning flag to half-mast, and at night flashing the warning searchlight. When aircraft are firing or soon will be firing in the danger zone, such deep-draft vessels may proceed unless warned to stay clear of the area by the method of warning known as "buzzing."

(7) When firing is not in progress or is not about to commence, oystering and fishing boats and other craft may operate within the danger zone.

(8) All projectiles, bombs, and rockets will be fired to land on Bloodsworth Island or Pone Island, but Naval authorities will not be responsible for damage by such projectiles, bombs, or rockets, or by Navy or Coast Guard vessels, to nets, traps, buoys, pots, fish pounds, stakes, or other equipment which may be located within the danger zone.

(9) The regulations in this section shall be enforced by the Commandant, Fifth Naval District, and such agencies as he may designate.

[36 FR 5218, Mar. 18, 1971]

§ 204.40 Potomac River.

(a) *U.S. Naval Weapons Laboratory, Dahlgren, Va.*—(1) *The danger zone*—(i) *Lower zone.* The entire portion of the lower Potomac River between a line from Point Lookout, Md., to Smith Point, Va., and a line from Buoy 14 (abreast of St. Clements Island) to a point near the northeast shore of Hollis Marsh at latitude 38°10′00″, longitude 76°45′23.5″. Long-range and aerial machine gun firing is normally conducted in this zone at infrequent intervals.

(ii) *Middle zone.* Beginning at the intersection of the Potomac River Bridge with the Virginia shore; thence to Light 33; thence to latitude 38°19′06″, longitude 76°57′07″, which point is about 3,300 yards east-southeast of Light 30; thence to Line of Fire Buoy O, about 1,150 yards southwesterly of Swan Point; thence to Line of Fire Buoy M, about 1,700 yards south of Potomac View; thence to Line of Fire Buoy K, about 1,400 yards southwesterly of the lower end of Cobb Island; thence to Buoy 14, abreast of St. Clements Island; thence southwesterly to a point near the northeast shore of Hollis Marsh at latitude 38°10′00″, longitude 76°45′23.5″; thence northwesterly to Line of Fire Buoy J, about 3,000 yards off Popes Creek, Va.; thence to Line of Fire Buoy L, about 3,600 yards off Church Point; thence to Line of Fire Buoy N, about 900 yards off Colonial Beach; thence to Line of Fire Buoy P, about 1,000 yards off Bluff Point; thence northwest to latitude 38°17′52″, longitude 77°01′00″, a point of the Virginia shore on property of the U.S. Naval Weapons Laboratory, a distance of about 3,800 yards; thence northerly along the shore of the U.S. Naval Weapons Laboratory to Baber Point, latitude 38°18′42″, longitude 77°01′45″; and thence north-northwest to latitude 38°19′09″, longitude 77°02′08″, a point on the Main Dock at the U.S. Naval Weapons Laboratory. Firing is normally conducted in this zone daily except Saturdays, Sundays, and national holidays.

(iii) *Upper zone.* Beginning at Mathias Point, Va.; thence north to Light 5; thence in a northeasterly direction to Light 6; thence east-southeast to Lighted Buoy 2, thence east-southeast to a point on the Maryland shore at approximately latitude 38°23′35″, longitude 76°59′18″; thence southerly with the Maryland shore to a line passing through Light 1 to the Virginia shore, parallel to the Potomac River Bridge; thence northerly with the Virginia shore to the point of beginning. Aerial bombing and strafing is normally conducted in this zone at infrequent intervals.

(2) *The regulations.* (i) Firing normally takes place between the hours of 8:00 a.m. and 4:00 p.m. daily except Saturdays, Sundays, and national holidays, with infrequent night firing be-

tween 4:00 p.m. and 10:30 p.m. During a national emergency, firing will take place between the hours of 6:00 a.m. and 10:30 p.m. daily except Sundays.

(ii) When firing is in progress, no fishing or oystering vessels shall operate within the danger zone affected unless so authorized by the Naval Weapons Laboratory's patrol boats. Oystering and fishing boats or other craft may cross the river in the danger zone only after they have reported to the patrol boats and received instructions as to when and where to cross. Deep-draft vessels using dredged channels and propelled by mechanical power at a speed greater than five miles per hour may proceed directly through the danger zones without restriction except when especially notified to the contrary. Unless instructed to the contrary by the patrol boat, small craft navigating up or down the Potomac River during firing hours shall proceed outside of the northeastern boundary of the Middle Danger Zone. All craft desiring to enter the Middle Danger Zone when proceeding in or out of Upper Machodoc Creek during firing hours will be instructed by the patrol boat; for those craft which desire to proceed in or out of Upper Machodoc Creek on a course between the western shore of the Potomac River and a line from the Main Dock of the U.S. Naval Weapons Laboratory to Line of Fire Buoy P, clearance will be granted to proceed upon request directed to the patrol boat.

(iii) The regulations in this section shall be enforced by the Commander, U.S. Naval Weapons Laboratory and such agencies as he may designate. Patrol boats, in the execution of their mission assigned herein, shall display a square red flag during daylight hours for purposes of identification; at night time, a 32 point red light shall be displayed at the mast head.

(b) *Accotink Bay, Accotink Creek, and Pohick Bay; United States Military Reservation, Fort Belvoir, Va.*— (1) *The danger zone.* The waters of Accotink Bay, Accotink Creek, and Pohick Bay, Virginia, within and adjacent to the target ranges of the United States Military Reservation, Fort Belvoir, as follows: All of Accotink Bay; all of Accotink Creek below the bridge which crosses Accotink Creek approximately 400 yards south of U.S. Highway No. 1; and that portion of Pohick Bay bordering its north shore. The mouth of Accotink Bay and that portion of Pohick Bay within the danger zone will be marked by the Post Commander with suitable warning buoys.

(2) *The regulations.* (i) When firing affecting the area is in progress, the Post Commander will post guards at such locations that the waters in the danger zone may be observed and arrange signals whereby these guards may stop the firing should any person be seen in the danger zone. When firing is in progress, the Post Commander will cause to be displayed both on the east shore of Accotink Bay at its mouth and near the danger zone boundary on Accotink Creek a red streamer which shall be visible to a person in a boat near those points.

(ii) Persons desiring to cross the waters in the danger zone shall first determine whether a red streamer is displayed on the east Shore of Accotink Bay at its mouth or near the danger zone boundary on Accotink Creek. If the red streamer is displayed, it will indicate that firing is in progress and that the waters in the danger zone are covered by rifle fire, and the area shall not be entered until the streamer is lowered.

(iii) The Post Commander is hereby authorized by using such agencies and equipment necessary to stop all boats at the boundary of the danger zone and prohibit their crossing the area until convenient to the firing schedule to do so.

[13 FR 6916, Nov. 24, 1948, as amended at 13 FR 9557, Dec. 31, 1948; 21 FR 2817, May 1, 1956; 22 FR 2951, Apr. 26, 1957; 28 FR 349, Jan. 12, 1963; 32 FR 3883, Mar. 9, 1967]

§ 204.41 Potomac River, Mattawoman Creek and Chicamuxen Creek; U.S. Naval Propellant Plant, Indian Head, Md.

(a) *The danger zone.* Beginning at a point on the easterly shore of the Potomac River at latitude 38°36′00″, longitude 77°11′00″; thence to latitude 38°34′30″, longitude 77°13′00″; thence to latitude 38°33′20″, longitude 77°14′20″; thence to latitude 38°32′20″,

longitude 77°15'10"; thence to latitude 38°32'00", longitude 77°15'0"; thence to latitude 38°32'00", longitude 77°14'40"; thence to latitude 38°32'30", longitude 77°14'00"; thence upstream along the easterly shoreline of Chicamuxen Creek to its head; thence downstream along the westerly shoreline of Chicamuxen Creek to the southernmost point of Stump Neck; thence northeasterly along the shoreline of Stump Neck to the mouth of Mattawoman Creek; thence along the southeasterly shore of Mattawoman Creek to the footbridge connecting the left bank of the creek to the Naval Propellant Plant; thence along the northwesterly shore of Mattawoman Creek from the footbridge to the mouth of the creek; thence in a northeasterly direction along the easterly shore of the Potomac River to the point of beginning.

(b) *The regulations.* (1) Firings consisting of controlled explosions within the danger zone, and controlled shore operations, or accidental explosions, hazardous to vessel traffic within the limits of the danger zone, may take place at any time of the day or night and on any day of the week.

(2) Flashing red lights, horns, and signs established at appropriate points will warn vessels of impending tests or operations considered to be hazardous to vessels within the danger zone.

(3) No vessel except vessels of the United States or vessels authorized by the enforcing agency shall enter or remain in the danger zone while lights are flashing, when warning horns are in operation, or when warned or directed by a patrol vessel.

(4) Nothing in this section shall prohibit the use of Mattawoman Creek or Chicamuxen Creek as a harbor of refuge because of stress of weather.

(5) Except as prescribed in paragraph (b)(3) of this section, vessels may enter and proceed through the danger zone without restriction; however, accidental explosions may occur at any time and vessels entering the area do so at their own risks.

(6) Fishermen operating in the danger zone when warning signals are sounded shall evacuate the area immediately.

(7) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Propellant Plant, Indian Head, Maryland.

[26 FR 9748, Oct. 17, 1961]

§ 204.42 Chesapeake Bay, Point Lookout to Cedar Point; aerial firing range and target areas, U.S. Naval Air Test Center, Patuxent River, Md.

(a) *Aerial firing range*—(1) *The danger zone.* The waters of Chesapeake Bay within an area described as follows: Beginning at the easternmost extremity of Cedar Point; thence easterly to the southern tip of Barren Island; thence southeasterly to latitude 38°01'15", longitude 76°05'33"; thence southwesterly to Chesapeake Channel Buoy 50 (approximately latitude 37°59'25", longitude 76°10'54"); thence northwesterly to latitude 38°02'20", longitude 76°17'26"; thence northerly to Point No Point Light; thence northwesterly to the shore at latitude 38°15'45"; thence northeasterly along the shore to the point of beginning. Aerial firing and dropping of nonexplosive ordnance will be conducted in this area throughout the year, Monday through Saturday, except national holidays.

(2) *The regulations.* (i) Through navigation of surface craft outside the target areas will be permitted at all times. Vessels shall proceed on their normal course and shall not delay their progress.

(ii) Prior to firing or ordnance drops, the range will be patrolled by naval surface craft or aircraft to warn watercraft likely to be endangered. Surface craft so employed will display a square red flag. Naval aircraft will use a method of warning consisting of repeated shallow dives in the area, following each dive by a sharp pullup.

(iii) Any watercraft under way or at anchor, upon being so warned, shall immediately vacate the area and shall remain outside the area until conclusion of firing practice.

(iv) Nothing in this section shall prevent the taking of shellfish or the setting of fishing structures within the range outside target areas in accordance with Federal and State regulations: *Provided,* That no permanent or temporary fishing structures or oyster ground markers shall be placed on the

western side of the Chesapeake Bay between Point No Point and Cedar Point without prior written approval of the Commanding Officer, U.S. Naval Air Station, Patuxent River, Md.

(v) Naval authorities will not be responsible for damage caused by projectiles, bombs, missiles, or Naval or Coast Guard vessels to fishing structures or fishing equipment which may be located in the aerial firing range immediately adjacent to the target areas.

(b) *Target areas*—(1) *Prohibited area.* A circular area with a radius of 1,000 yards having its center at latitude 38°13'00", longitude 76°19'00" identified as Hooper Target.

(2) *Restricted area.* A circular area with a radius of 600 yards having its center at latitude 38°02'18", longitude 76°09'26", identified as Hannibal Target.

(3) *The regulations.* Nonexplosive projectiles and bombs will be dropped at frequent intervals in the target areas. Hooper Target shall be closed to navigation at all times and Hannibal Target during daylight hours, except for vessels engaged in operational and maintenance operations as directed by the Commanding Officer, U.S. Naval Air Station, Patuxent River, Md. No person in the waters, vessel, or other craft shall enter or remain in the closed area except on prior written approval of the Commanding Officer, U.S. Naval Air Station, Patuxent River, Md.

(c) The regulations in this section shall be enforced by the Commander, Naval Air Test Center, and such agencies as he may designate.

[31 FR 13648, Oct. 22, 1966]

§ 204.44 Chesapeake Bay, in vicinity of Tangier Island; Naval guided missiles test operations area.

(a) *The danger zone*—(1) *Prohibited area.* A circle 1,000 yards in radius with its center at latitude 37°47'54", longitude 76°03'48".

(2) *Restricted area.* A circle three nautical miles in radius with its center at latitude 37°47'54", longitude 76°03'48", excluding the prohibited area.

(b) *The regulations.* (1) Vessels or other craft shall not enter or remain in the prohibited area at any time unless authorized to do so by the enforcing agency.

(2) Except as otherwise provided in paragraph (b)(6) of this section, vessels or other craft shall not enter or remain in the restricted area when firing is or will soon be in progress unless authorized to do so by the enforcing agency.

(3) Advance notice will be given of the date on which the first firing is to be conducted and such notice will be published in "Notice to Mariners." Thereafter, the danger zone will be in use intermittently throughout the year and no further notice is contemplated that firing is continuing.

(4) Warning that firing is or will soon be in progress will be indicated by a red flag displayed from one of six dolphin platforms on the perimeter of the prohibited area, and by patrol vessels within the danger zone or by aircraft employing the method of warning known as "buzzing" which consists of low flight by the airplane and repeated opening and closing of the throttle. Surface or air search of the entire area will be made prior to the commencement of firing on each scheduled day. During periods of firing a patrol vessel will remain in the approaches to the restricted area and maintain continuous contact with the firing planes to warn when the area is not clear.

(5) Upon observing the warning flag or upon receiving a warning by any of the patrol vessels or aircraft, vessels or other craft shall immediately vacate the restricted area and remain outside the area until the conclusion of firing for the day.

(6) This section shall not deny traverse of portions of the restricted area by commercial craft proceeding in established steamer lanes, but when firing is or will soon be in progress all such craft shall proceed on their normal course through the area with all practicable speed.

(7) All projectiles, bombs and rockets will be fired to land within the prohibited area, and on or in the immediate vicinity of a target in the restricted area located adjacent to the west side

of Tangier Island. The Department of the Navy will not be responsible for damages by such projectiles, bombs, or rockets to nets, traps, buoys, pots, fishpounds, stakes, or other equipment which may be located within the restricted area.

(8) The regulations of this section shall be enforced by the Commander, Naval Air Bases, Fifth Naval District, Norfolk, Virginia, and such agencies as he may designate.

[13 FR 6918, Nov. 24, 1948, as amended at 22 FR 3706, May 25, 1957; 24 FR 3760, May 6, 1959]

§ 204.46 Chesapeake Bay, South of Tangier Island, Virginia; naval firing range.

(a) *The danger zone.* Beginning at latitude 37°46′39″, longitude 75°57′43″, thence to latitude 37°43′42″, longitude 75°55′30″; thence to latitude 37°27′00″, longitude 76°02′48″; thence to latitude 37°27′00″; longitude 76°08′00″; thence to latitude 37°45′00″, longitude 76°09′48″; thence to latitude 37°45′00″, longitude 76°08′51″; and thence along the circumference of a circle of five nautical miles radius whose center is at latitude 37°47′54″, longitude 76°03′48″, to the point of beginning.

(b) *The regulations.* (1) Any vessel propelled by mechanical means or by sail at a speed greater than five knots may proceed through the danger zone to and from points without, but not from one point to another point within, the area, except when especially notified to the contrary.

(2) All vessels, other than naval craft, are forbidden to anchor within the danger zone except in cases of great emergency. All vessels anchoring under circumstances of great emergency within the area shall leave the area immediately after the emergency ceases or upon notification by the enforcing agency.

(3) Fishing, oystering, clamming, crabbing, and other aquatic activities are forbidden within the limits of the danger zone, except that existing fishing structures licensed by the State of Virginia may be maintained and operated: *Provided,* The owners thereof obtain written permits from the enforcing agency designated in paragraph (b)(5) of this section.

(4) Day and night firing over the range will be conducted intermittently by one or more vessels, depending on weather and operating schedules. When firing is in progress, adequate patrol by naval craft will be conducted to prevent vessels from entering or remaining within the danger zone.

(5) This section shall be enforced by the Commandant, Fifth Naval District, U. S. Naval Base, Norfolk, Virginia, and such agencies as he may designate.

[13 FR 6918, Nov. 24, 1948, as amended at 22 FR 6965, Dec. 4, 1957]

§ 204.48 Atlantic Ocean and connecting waters in vicinity of Myrtle Island, Va.; Air Force practice bombing, rocket firing, and gunnery range.

(a) *The danger zone.* The waters of the Atlantic Ocean and connecting waters within an area described as follows: Beginning at latitude 37°12′18″, longitude 75°46′00″; thence southwesterly to latitude 37°08′21″, longitude 75°50′00″; thence northwesterly along the arc of a circle having a radius of three nautical miles and centered at latitude 37°11′16″, longitude 75°49′29″, to latitude 37°10′14″, longitude 75°52′57″; thence northeasterly to latitude 37°14′30″, longitude 75°48′32″; thence southeasterly to 37°13′38″, longitude 75°46′18″; and thence southeasterly to the point of beginning.

(b) *The regulations.* (1) No vessel shall enter or remain in the danger zone except during intervals specified and publicized from time to time in local newspapers or by radio announcement.

(2) This section shall be enforced by the Commanding General, Tactical Air Command, Langley Air Force Base, Virginia, and such agencies as he may designate.

[18 FR 8698, Dec. 24, 1953]

§ 204.49 Chesapeake Bay off Plumtree Island, Hampton, Va.; Air Force precision test area.

(a) *The danger zone.* The waters of Chesapeake Bay and connecting waters within an area bounded as follows: Beginning at latitude 37°08′12″, longitude 76°19′30″, which is a point on the circumference of a circle of

10,000-foot radius with its center on Plumtree Point at latitude 37°07'30", longitude 76°17'36"; thence clockwise along the circumference of the circle to latitude 37°09'06", longitude 76°18'00"; thence southeasterly to latitude 37°08'12", longitude 76°17'48"; thence clockwise along the circumference of a circle of 4,000-foot radius (with its center at latitude 37°07'30", longitude 76°17'36") to latitude 37°07'48", longitude 76°18'24"; thence northwesterly to the point of beginning.

(b) *The regulations.* (1) The danger zone will be in use not more than a total of 4 hours per month, which hours shall be during not more than any 2 days per month.

(2) No vessel shall enter or remain in the danger zone during periods of firing or bombing or when the zone is otherwise in use.

(3) The Commander, Tactical Air Command, Langley Air Force Base, Va., shall be responsible for publicizing in advance through the Coast Guard's "Local Notice to Mariners," in the local press, and by radio from time to time the schedule of use of the area, and shall station patrol boats to warn vessels during periods of use.

(4) This section shall be enforced by the Commander, Tactical Air Command, Langley Air Force Base, Va., or such agency as he may designate.

(c) *Disestablishment of danger zone.* The danger zone will be disestablished not later than December 31, 1967, unless written application for its continuance shall have been made to and approved by the Secretary of the Army prior to that date.

[28 FR 1106, Feb. 5, 1963]

§ 204.49a Chesapeake Bay off Fort Monroe, Va.; firing range danger zone.

(a) *The danger zone.* All of the water area lying within a section extending seaward a distance of 4,600 yards between radial lines bearing 83° True and 115° True, respectively, from a point on shore at latitude 37°01'30" N., longitude 76°17'54" W.

(b) *The regulations.* (1) No weapon having a greater range than the 30-calibre carbine is to be fired into the firing range danger zone.

(2) During periods when firing is in progress, red flags will be displayed at conspicuous locations on the beach. Observers will be on duty and firing will be suspended as long as any vessel is within the danger zone.

(3) Passage of vessels through the area will not be prohibited at any time, nor will commercial fishermen be prohibited from working fish nets within the area. No loitering or anchoring for other purposes will be permitted during announced firing periods.

(4) No firing will be done during hours of darkness or low visibility.

(5) The Commander, Fort Monroe, Va., is responsible for furnishing in advance the firing schedule to the Commander, 5th Coast Guard District, for publication in his "Local Notice to Mariners" and to the local press at Norfolk and Newport News, Va.

(c) The regulations in this section shall be enforced by the Commanding Officer, Fort Monroe, Va., and such agencies as he may designate.

[35 FR 6575, Apr. 24, 1970]

§ 204.50 Chesapeake Bay off Fort Monroe, Va.; restricted area, U.S. Naval Base and Naval Ordnance Laboratory.

(a) *The danger zone.* Beginning at latitude 37°00'30", longitude 76°18'05"; thence to latitude 37°00'38", longitude 76°17'42"; thence to latitude 37°01'00", longitude 76°17'15"; thence to latitude 37°01'00", longitude 76°16'11"; thence to latitude 36°59'43", longitude 76°16'11"; thence to latitude 36°59'18", longitude 76°17'52"; thence to latitude 37°00'05", longitude 76°18'17"; and thence north along the seawall to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, fishing, and dragging are prohibited in the danger zone, and no object, either attached to a vessel or otherwise, shall be placed on or near the bottom.

(2) This section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he may designate.

[13 FR 6919, Nov. 24, 1948, as amended at 15 FR 2085, Apr. 13, 1950; 21 FR 421, Jan. 20, 1956; 21 FR 1593, Mar. 14, 1956]

§ 204.51 Chesapeake Bay, Lynnhaven Roads; danger zones, U.S. Naval Amphibious Base.

(a) *Underwater demolitions area (prohibited)*—(1) *The area.* A portion of the restricted area for Navy amphibious training operations described in § 207.157, along the south shore of Chesapeake Bay, bounded as follows: Beginning at a point on the mean low-water line at longitude 76°08′59″; thence 200 yards to latitude 36°55′36″, longitude 76°08′57″; thence 400 yards to latitude 36°55′34″, longitude 76°08′43″; thence 200 yards to a point on the mean low-water line at longitude 76°08′45″; and thence approximately 400 yards along the mean low-water line to the point of beginning. The area will be marked by range poles set on shore on the prolongation of the lines forming its eastern and western boundaries.

(2) *The regulations.* Vessels other than those owned and operated by the United States shall not enter the prohibited area at any time unless authorized to do so by the enforcing agency.

(b) *Small-arms firing range*—(1) *The Area.* Beginning at a point on the shore line at latitude 36°55′27″, longitude 76°08′38″; thence to latitude 36°55′50″, longitude 76°08′37″; thence to latitude 36°57′11″, longitude 76°08′11″; thence to latitude 36°56′53″, longitude 76°07′18″; thence to latitude 36°55′39″, longitude 76°07′46″; thence to latitude 36°55′22″, longitude 76°08′17″; thence along the shore line to the point of beginning.

(2) *The regulations.* (i) Passage of vessels through the area will not be prohibited at any time, nor will commercial fishermen be prohibited from working fish nets within the area. No loitering or anchoring for other purposes will be permitted.

(ii) A large red warning flag will be flown on shore during periods when firing is in progress. Observers will be on duty and firing will be suspended for the passage of vessels and for the placing and maintenance of fish nets within the area.

(c) This section shall be enforced by the Commanding Officer, U.S. Naval Amphibious Base, Little Creek, Norfolk, Virginia.

[19 FR 1246, Mar. 5, 1954, as amended at 28 FR 225, Jan. 9, 1963]

§ 204.51a Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, Virginia Beach, Virginia, naval firing range.

(a) *The danger zone.* All of the water area within a sector extending seaward a distance of 5,000 yards between radial lines bearing 35° true and 92° true, respectively, from a point on the shore at latitude 36°47′33″, longitude 75°58′23″.

(b) *The regulations.* (1) During the period from sunrise to sunset vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit.

(2) When firing is in progress, red flags will be displayed at conspicuous locations on the beach.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts will be maintained by the Fleet Anti-Air Warfare Training Center, Dam Neck, Virginia Beach, Virginia.

(5) There shall be no firing on any of the ranges between sunset and sunrise, nor during other periods of low visibility.

(6) The regulations in this section shall be enforced by the Commanding Officer of the Fleet Anti-Air Warfare Training Center, Dam Neck, Virginia Beach, Virginia, and such agencies as he may designate.

[29 FR 5679, Apr. 29, 1964]

§ 204.52 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

(a) *The danger zone.* A sector extending seaward for a distance of 12,000 yards between two radial lines bearing 30° true and 75° true, respectively, from a point on the shore at latitude 36°46′48″, longitude 75°57′24″; and an adjacent sector extending seaward for a distance of 15 miles between two radial lines bearing 75° true and 150° true, respectively, from the same shore position.

(b) *The regulations.* (1) During the period from sunrise to sunset vessels shall proceed through the area with

caution and shall remain therein no longer than necessary for purposes of transit.

(2) When firing is in progress, red flags will be displayed at conspicuous locations on the beach.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts will be maintained by the activity or agency operating the firing range at Fleet Combat Direction Systems Training Center, Atlantic, Dam Neck, Virginia Beach, Va.

(5) There shall be no firing on any of the ranges between sunset and sunrise, nor during other periods of low visibility.

(6) The regulations in this section shall be enforced by the Commander, Naval Air Force, U.S. Atlantic Fleet/Commander, Fleet Air Norfolk, Norfolk, Va., and such agencies as he may designate.

(Regs., May 30, 1973, 1522-01, Atlantic Ocean South of entrance to Chesapeake Bay—DAEN-CWO-N; sec. 7, 40 Stat. 266; 33 U.S.C. 1.)

[13 FR 6919, Nov. 24, 1948, as amended at 29 FR 5679, Apr. 29, 1964; 38 FR 16223, June 21, 1973]

§ 204.53 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval prohibited area.

(a) *The area.* Beginning at a point on the shore at Camp Pendleton at latitude 36°48′19″ N, longitude 75°57′49″ W; thence easterly 200 yards to latitude 36°48′20″ N, longitude 75°57′42″ W; thence northerly 400 yards to latitude 36°48′32″ N, longitude 75°57′45″ W; thence westerly 200 yards to latitude 36°48′31″ N, longitude 75°57′53″ W; and thence southerly 400 yards along the shore to the point of beginning.

(b) *The regulations.* (1) Vessels other than those owned and operated by the United States shall not enter the area except by permission of the Commanding Officer, U.S. Naval Amphibious Base, Little Creek, Norfolk, Virginia.

(2) This section shall be enforced by the Commanding Officer, U.S. Naval Amphibious Base, Little Creek, Norfolk, Virginia, and such agencies as he may designate.

[22 FR 8957, Nov. 6, 1957]

§ 204.54 Albemarle Sound, Pamlico Sound, and adjacent waters, N.C.; danger zones for naval aircraft operations.

(a) *Target areas*—(1) *North Landing River (Currituck Sound).* The waters of North Landing River within a radius of 1,000 yards from a target located at latitude 36°31′00″, longitude 76°01′40″.

(2) *Northern part of Currituck Sound.* Beginning at a point bearing 65°30′, 1,025 yards, from Currituck Sound Light 69; thence 86°, 6,000 yards; thence 193°, 4,425 yards; thence 267° 30′, 2,775 yards; and thence to the point of beginning. The target is located at latitude 36°27′16″, longitude 75°56′30″.

NOTE: All bearing in this section are referred to true meridian.

(b) *Target and bombing areas*—(1) *Along north shore of Albemarle Sound*— (i) *The area.* Beginning on the north shore of Albemarle Sound at the easternmost tip of Harvey Point; thence southeasterly to Day Beacon Number 3; thence southeasterly to latitude 36°03′06″, longitude 76°16′43″; thence southwesterly to latitude 36°02′18″, longitude 76°19′30″; thence northwesterly to latitude 36°04′18″, longitude 76°20′20″; thence 23°15′ true to the shore; and thence northeasterly along the shore to the point of beginning.

(2) *Along south shore of Albemarle Sound*—(i) *The area.* Beginning at latitude 36°00′43″, longitude 76°19′20″; thence to latitude 36°02′40″, longitude 76°04′26″, thence to latitude 36°00′12″, longitude 76°04′26″; thence to latitude 35°59′35″, longitude 76°19′20″, and thence to the point of beginning. This area is divided into three subareas A, B, and C as follows: Area A, beginning at latitude 36°00′43″, longitude 76°19′20″; thence to latitude 36°01′20″, longitude 76°14′30″; thence to latitude 35°59′45″, longitude 76°14′30″; thence to latitude 35°59′35″, longitude 76°19′20″, and thence to the point of beginning. Area B, beginning at latitude 36°01′20″, longitude 76°14′30″; thence to latitude 36°02′18″, longitude 76°07′15″; thence to latitude 36°00′05″,

longitude 76°07'15"; thence to latitude 35°59'45", longitude 76°14'30"; and thence to the point of beginning. Area C, beginning at latitude 36°02'18", longitude 76°07'15"; thence to latitude 36°02'40", longitude 76°04'26"; thence to latitude 36°00'12", longitude 76°04'26"; thence to latitude 36°00'05", longitude 76°07'15"; and thence to the point of beginning.

(c) *Naval Aviation Ordnance test area in Pamlico Sound in vicinity of Long Shoal.* A circular area with a radius of one and one-half miles having its center at latitude 35°32'18", longitude 75°40'39".

(d) *The regulations*—(1) *Target areas.* The area described in paragraph (a)(1) of this section will be used as a dive bombing target by naval aircraft. In peacetime, munitions will be limited to miniature bombs which contain only small explosive charges for producing smoke puffs to mark points of impact. All operations will be conducted during daylight hours, and the area will be open to navigation at night. No vessel shall enter this area during the hours of daylight without special permission from the enforcing agency. The area will be patrolled and vessels will be warned not to enter. "Buzzing" by plane will warn vessels that they are in a danger zone, and upon being so warned vessels which have inadvertently entered the area shall immediately leave the area.

(2) *Target and bombing areas.* The areas described in paragraph (b)(1) and (2) of this section will be used as a target and bombing area for both day and night operations. No use will be made of the area described in paragraph (b)(1) of this section for target and bombing operations during the period 30 days prior to and during the annual duck hunting season as established by the State of North Carolina. Dummy ammunition, waterfilled or smoke bombs, and inert rockets will be used, except during wartime when live ammunition, bombs, and rockets may be used. The areas will be open to navigation except for periods when ordnance exercises are being conducted by naval aircraft. In area B described in paragraph (b)(2) of this section the placing of nets, traps, buoys, pots, fishponds, stakes, or other equipment which may interfere with target vessels operating in the area shall not be permitted. The areas will be patrolled and vessels shall clear the area under patrol upon being warned by the surface patrol craft or when "buzzed" by patrolling aircraft. As a further means of warning vessels of naval aircraft operations in the area described in paragraph (b)(1) of this section, a cluster of flashing red lights at night and a large red flag by day will be displayed from the range observation tower located in the approximate center of the shore side of this area.

(3) *Naval Aviation Ordnance test area.* The area described in paragraph (c) of this section shall be closed to navigation except for such military vessels as may be directed by the enforcing agency to enter on assigned duties.

(4) *Enforcing agency.* The regulations in this section shall be enforced by the Commander Fleet Air Norfolk, and such agencies as he may designate.

[Regs., Jan. 6, 1975, 1522-01 (Albemarle Sound, N.C.)—DAEN-CWO-N]

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1: Chap. XIX, 40 Stat. 892; 33 U.S.C. 3)

[16 FR 3131, Apr. 10, 1951, as amended at 16 FR 7460, July 31, 1951; 19 FR 479, Jan. 28, 1954; 31 FR 12436, Sept. 20, 1966; 33 FR 3218, Feb. 21, 1968; 40 FR 3993, Jan. 27, 1975]

§ 204.55 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.

(a) *Bombing and rocket firing area in Pamlico Sound in vicinity of Brant Island*—(1) *The area.* The waters within a circular area with a radius of 3.0 statute miles having its center on the southern side of Brant Island at latitude 35°12'30", longitude 76°26'30".

(2) *The regulations.* The area shall be closed to navigation at all times except for vessels engaged in operational and maintenance work as directed by the enforcing agency. Prior to bombing or firing operations the area will be "buzzed" by plane. Upon being so warned vessels working in the area shall leave the area immediately.

(b) *Bombing, rocket firing, and strafing areas in Pamlico Sound and Neuse*

River—(1) *The areas.* (i) The waters within a circular area with a radius of 1.8 statute miles having its center at latitude 35°02′12″, longitude 76°28′00″.

(ii) The waters within a circular area with a radius of 0.5 statute mile having its center at latitude 35°00′30″, longitude 76°29′50″.

(iii) The waters within a circular area with a radius of 0.5 statute mile having its center at latitude 35°04′12″, longitude 76°28′24″.

(iv) The waters within a circular area with a radius of 0.5 statute mile having its center at latitude 35°01′42″, longitude 76°25′48″.

(v) The waters within a circular area with a radius of 0.5 statute mile having its center at latitude 34°58′48″, longitude 76°26′12″.

(2) *The regulations.* (i) The areas described in paragraph (b)(1) (i) and (ii) of this section will be used as bombing, rocket firing, and strafing areas. Live and dummy ammunition will be used. The areas shall be closed to navigation at all times except for such vessels as may be directed by the enforcing agency to enter on assigned duties. The areas will be patrolled and vessels "buzzed" by the patrol plane prior to the conduct of operations in the areas. Vessels which have been inadvertently entered the danger zones upon being so warned shall leave the area immediately.

(ii) The areas described in paragraph (b)(1) (iii), (iv), and (v) of this section will be used as bombing, rocket firing, and strafing areas. Practice and dummy ammunition will be used. All operations will be conducted during daylight hours, and the areas will be open to navigation at night. No vessel shall enter these areas during the hours of daylight without special permission from the enforcing agency. The areas will be patrolled and vessels "buzzed" by the patrol plane prior to the conduct of operations in the areas. Vessels which have inadvertently entered the danger zones upon being so warned shall leave the areas immediately.

(c) *Enforcing agency.* The regulations of this section shall be enforced by the Commander, Marine Corps Air Bases, East, Cherry Point, North Carolina, or his authorized representatives.

[26 FR 9673, Oct. 13, 1961]

§ 204.56 New River, N.C., and vicinity; Marine Corps Firing Ranges.

(a) *Atlantic Ocean east of New River Inlet.* The waters of the Atlantic Ocean within a sector bounded on the north by a line bearing 105° from latitude 34°37′25″, longitude 77°10′35″; on the east and south by the arc of a circle having a radius of 25,000 yards centered at latitude 34°34′15″, longitude 77°16′10″; on the west by a line bearing 205° from latitude 34°32′37″, longitude 77°18′34″, and on the northwest by the shore.

NOTE: All bearings in this section are referred to true meridian.

(b) *New River.* The firing ranges include all waters to the high waterline within eight sections described as follows:

(1) *Trap Bay Sector.* Bounded on the south by a line running from Cedar Point 280° to New River Light 70, thence 254° to Hatch Point; and on the northwest by a line running from Wilkins Bluff 232° to Hall Point.

(2) *Courthouse Bay Sector.* Bounded on the southeast by the northwest boundary of the Traps Bay Sector and on the west by Sneads Ferry Bridge.

(3) *Stone Bay Sector.* Bounded on the east by Sneads Ferry Bridge and on the north by a line running from a point on the east side of New River opposite the head of Sneads Creek 291°30′ to the south side of the mouth of Stone Creek.

(4) *Stone Creek Sector.* The northwest portion of Stone Bay, bounded on the south by the north boundary of the Stone Bay Sector; and on the east by longitude 77°26′.

(5) *Grey Point Sector.* Bounded on the south by the north boundary of the Stone Bay Sector; on the west by the east boundary of the Stone Creek Sector; and on the northeast by a line running from Town Point 113° to the south side of the mouth of French Creek.

(6) *Farnell Bay Sector.* Bounded on the south by the northeast boundary of the Grey Point Sector, including French Creek up to longitude 77°20′; and on the north by a line running

from Hadnot Point 285°30' to Holmes Point.

(7) *Morgan Bay Sector.* Bounded on the south by the north boundary of the Farnell Bay Sector, including Wallace Creek up to longitude 77°22'; and on the northwest by a line running from Paradise Point 243°30' to Ragged Point.

(8) *Jacksonville Sector.* Bounded on the southeast by the northwest boundary of the Morgan Bay Sector, including Southwest Creek up to the point where it narrows to 200 feet in width, and Northeast Creek up to longitude 77°23'30"; and on the north by an east-west line passing through New River Day Beacon 41.

(c) *The regulations.* (1) Sailing vessels and any watercraft having a speed of less than 5 knots shall keep clear of any closed sector at all times after notice of firing therein has been given. Vessels propelled by mechanical power at a speed greater than 5 knots may enter the sectors without restriction except when the firing signals are being displayed. When these signals are displayed, vessels shall clear the closed sectors immediately and no vessels shall enter such sectors until the signals indicate that firing has ceased.

(2) Firing will take place both day and night at irregular periods throughout the year. Insofar as training requirements will permit, underwater explosions will be restricted in the Atlantic Ocean sector (described in paragraph (a) of this section) during the periods May 1 and June 5, inclusive, and November 22 to December 15, inclusive.

(3) Two days in advance of the day when firing in any sector except the Stone Creek sector is scheduled to begin, the enforcing agency will warn the public of the contemplated firing, stating the sector or sectors to be closed, through the public press and the United States Coast Guard and, in the case of the Atlantic Ocean sector, the Cape Fear Pilots Association at Southport, and the Pilots Association at Moorehead City, North Carolina. The Stone Creek sector may be closed without advance notice.

(4) Towers at least 50 feet in height will be erected near the shore at the northeast and southwest limits of the Atlantic Ocean sector, and towers at least 25 feet in height will be erected near the easterly shore at the upper and lower limits of each New River sector. On days when firing is to take place a red flag will be displayed on each of the towers marking the sector or sectors to be closed. These flags will be displayed by 8:00 a.m., and will be removed when firing ceases for the day. Suitable range markers will be erected indicating the bearings of the north and west limits of the Atlantic Ocean sector.

(5) During the night firing, red lights will be displayed on the towers; and, in the case of the Atlantic Ocean sector, searchlights will be employed as barrier lights to enable safety observers to detect vessels which may attempt to enter the danger zone.

(d) *Target and bombing area in Atlantic Ocean in vicinity of Bear Inlet*— (1) *The area.* The waters within an area described as follows: Beginning at latitude 34°37'32", longitude 77°12'03"; thence to latitude 34°36'58", longitude 77°11'25"; thence to latitude 34°37'44", longitude 77°10'35"; thence to latitude 34°32'27", longitude 77°06'30"; thence to latitude 34°30'50", longitude 77°10'20"; thence to latitude 34°36'00", longitude 77°14'00"; and thence to the point of beginning.

(2) *The regulations.* Vessels may proceed along established waterways except during military training periods. Warning of military training periods will be given through Notices to Mariners and by displaying one hour prior to commencement a red danger streamer during daylight hours or a red light at night, from a flag pole 40 feet in height located at the U.S. Coast Guard Life Boat Station, Bogue Inlet, Swansboro, North Carolina, and from observation tower 40 feet in height located at the northern end of Onslow (Hurst) Beach. Prior to bombing and firing operations, the area will be searched by plane. Watercraft in the area will be warned by aircraft "buzzing" of the impending target practice. Upon being so warned, vessels shall leave the area as quickly as possible by the most direct route.

(e) *Inland waters in the Browns Inlet area between Bear Creek and Onslow Beach Bridge over the Atlantic*

Intracoastal Waterway—(1) *The area.* Navigable waters between Bear Creek and Onslow Beach Bridge to include all inlets, streams, bays, and water therein contained, bounded on the north by Bear Creek, on the east and south by the Atlantic Ocean, to the meridian 77°16′20″; thence by this meridian to latitude 34°34′31″; and thence by a line bearing 44° from this point until the line intersects Bear Creek.

(2) *The regulations.* (i) Vessels may proceed through the Atlantic Intracoastal Waterway in the area without stopping except in cases of extreme emergencies.

(ii) All navigable waters in the area between the south bank of Bear Creek and the north bank of the north connecting channel between the Atlantic Intracoastal Waterway and Browns Inlet shall be closed to navigation at all times. There are highly sensitive unexploded projectiles within the limits of this area.

(iii) Vessels may proceed through the north connecting channel and the south connecting channel (Banks Channel) in the area between the Atlantic Intracoastal Waterway and Browns Inlet to the Atlantic Ocean without stopping during periods of nonmilitary use. Caution should be used when proceeding through these waters due to the presence of unexploded projectiles lying in this area.

(iv) Navigable waters in the area between the south connecting channel (Banks Channel) leading to Browns Inlet and Onslow Beach Bridge on both sides of the Atlantic Intracoastal Waterway are open to unrestricted navigation during periods of nonmilitary use. An unknown element of risk exists in this area due to the possible presence of unexploded projectiles.

(v) Warning of impending military use of the area will be contained in weekly Notice to Mariners.

(vi) Vessels having specific authority from the Commanding General, Marine Corps Base, Camp Lejeune, North Carolina, may enter the area.

(f) *Enforcing agency.* The regulations of this section shall be enforced by the Commanding General, Marine Corps Base, Camp Lejeune, North Carolina, or his authorized representatives.

[26 FR 9673, Oct. 13, 1961]

§ 204.80 Archers Creek, Ribbon Creek and Broad River, S.C.; U.S. Marine Corps Recruit Depot Rifle and Pistol Ranges, Parris Island.

(a) During periods when the rifle and pistol ranges on Parris Island are in use, the following areas will be restricted to navigation:

(1) *At the rifle range.* Archers Creek between Broad River and Beaufort River and Ribbon Creek from Broad Creek entrance. The area is inclosed by the following points:

Latitude	Longitude
32°21′40″	80°44′52″
32°21′51″	80°44′38″
32°21′54″	80°44′41″
32°22′01″	80°44′21″
32°22′08″	80°44′15″
32°22′15″	80°44′07″
32°22′17″	80°44′05″
32°22′20″	80°43′52″
32°22′17″	80°43′48″
32°22′17″	80°43′47″
32°21′44″	80°43′28″
32°21′30″	80°43′13″
32°20′55″	80°42′23″
32°20′21″	80°42′24″
32°20′06″	80°42′43″
32°20′12″	80°43′01″
32°20′18″	80°43′22″
32°20′28″	80°43′33″
32°20′30″	80°43′37″
32°20′35″	80°43′41″

and thence to point of beginning:

Latitude	Longitude
32°21′40″	80°44′52″

(2) *At the pistol range.* An area in Broad River inclosed by the following points:

Latitude	Longitude
32°20′09″	80°42′57″
32°19′27″	80°42′27″
32°18′57″	80°43′24″
32°19′39″	80°43′54″
32°20′00″	80°43′36″
32°20′00″	80°43′15″

The area will be adequately marked by red flags for the convenience and protection of the general public.

(b) Firing over these ranges will normally take place between the hours of 6:30 a.m. and 5 p.m., Monday through Friday, and from 6 a.m. to 12 noon on Saturday, National holidays excepted, and at other times as designated and properly published by the Commanding General, Parris Island Marine Base.

(c) Vessels and other watercraft shall not enter the restricted waters when firing is in progress. At all other times these waters are open to navigation. Safety regulations shall be enforced at all times with the following specific precautions being provided by the Parris Island Marine Base:

(1) *At the rifle range.* Warning signs indicating the periods when the rifle range is in use will be posted by the entrances to Archers Creek and Ribbon Creek. Also the warning signs will be placed at the corners of the rifle range impact area.

(2) *At the pistol range.* Warning flag shall be flown from top of a lookout tower with a sentry lookout during actual firing. Also a patrol boat shall be accessible for clearing the area and warning all approaching vessels of the danger zone area and the schedule of firing. During storms or similar emergencies this area shall be opened to vessels to reach safety without undue delay for the preservation of life and property.

(d) The regulations in this section shall be enforced by the Commanding General, Marine Corps Recruit Depot, Parris Island, South Carolina, and such agencies as he may designate.

[29 FR 6682, May 22, 1964, as amended at 36 FR 22238, Nov. 23, 1971]

§ 204.81 Atlantic Ocean off Georgia Coast; air-to-air and air-to-water gunnery and bombing ranges for fighter and bombardment aircraft, United States Air Force.

(a) *The danger zones*—(1) *For fighter aircraft.* An area approximately 30 miles offshore between Wassaw Sound and Brunswick, Georgia, described as follows: Beginning at latitude 31°55′30″, longitude 80°24′00″; thence 90° true to longitude 80°16′00″; thence southwesterly to latitude 31°10′00″, longitude 80°43′00″; thence 270° to longitude 80°51′00″; and then northeasterly to the point of beginning.

(2) *For bombardment aircraft.* An area approximately 70 miles off shore between Savannah Beach and Brunswick, Georgia, described as follows: Beginning at latitude 32°00′00″, longitude 79°43′00″; thence 90° true to longitude 79°07′00″; thence southwesterly to latitude 31°10′00″, longitude 79°24′00″; thence 270° true to longitude 80°00′00″; and thence northeasterly to the point of beginning.

(b) *The regulations.* (1) The danger zones shall be open to navigation except when aerial gunnery or bombing practice is being conducted.

(2) Prior to conducting each practice the entire area will be patrolled by aircraft to warn any watercraft found in the vicinity that such practice is about to take place. The warnings will be by "buzzing," i.e., by flying low over the watercraft. Any watercraft shall, upon being so warned, immediately leave the area designated and shall remain outside the area until practice has ceased.

(3) The regulations in this section shall be enforced by the Commanding Officer, 2d Bombardment Wing, Hunter Air Force Base, Savannah, Georgia, and such agencies as he may designate.

[16 FR 818, Jan. 30, 1951, as amended at 16 FR 2397, Mar. 14, 1951]

§ 204.82 Lake George, Fla.; naval bombing area.

(a) *The danger zone.* An area in the eastern part of Lake George described as follows: Beginning at latitude 29°13′16″, longitude 81°34′28″; thence along a line parallel to the navigation channel to latitude 29°20′05″, longitude 81°36′15″; thence along a line about three-fifths mile southerly from the Putnam-Volusia County line to latitude 29°20′19″, longitude 81°35′12″; thence to latitude 29°18′36″, longitude 81°33′53″; thence to latitude 29°13′22″, longitude 81°32′38″; and thence to the point of beginning. The area will be marked by appropriate warnings signs at the five corners and at the midpoint of the longer side.

(b) *The regulations.* (1) Bombing operations will be confined, as nearly as

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practicable, to the north-south center line of the danger zone, keeping well clear of the navigation channel.

(2) Prior to each bombing operation the danger zone will be patrolled by naval aircraft which will warn vessels to leave the area by "zooming" a safe distance to the side and at least 500 feet above the surface. Upon being so warned such vessels shall leave the danger zone immediately, and no vessel shall enter the danger zone until bombing operations have ceased.

(3) At intervals of not more than three months, public notices will be issued that bombing operations are continuing. Such notices will appear in the local newspaper and in "Notice to Mariners".

(4) The regulations in this section shall not deny passage through Lake George by regular cargo-carrying vessels proceeding along established lanes for such vessels. When any such vessel is within the danger zone the officer in charge of the bombing operations will cause the cessation or postponement of such operations until the vessel has cleared the area. The vessel shall proceed on its normal course and shall not delay its progress.

(5) The regulations in this section shall be enforced by the Commander, Naval Air Bases, Sixth Naval District, Naval Air Station, Jacksonville, Florida, and such agencies as he may designate.

[16 FR 10992, Oct. 30, 1951]

§ 204.85 Atlantic Ocean off Cape Canaveral, Fla.; Air Force Missile Testing Area, Patrick Air Force Base, Fla.

(a) *The danger zone.* An area in the Atlantic Ocean immediately offshore from Cape Canaveral defined by a line 3 nautical miles from shore, said area terminating in the north at a line on a bearing of 70° from a point on shore at approximate latitude 28°35′ north and in the south at a line on a bearing of 115° from a point on the shore at approximate latitude 28°25′ north.

(b) *The regulations.* (1) All unauthorized vessels are prohibited from operating within the danger zone during firing periods to be specified by the Commander, Air Force Missile Test Center, Patrick Air Force Base.

(2) Warning signals will be used to warn vessels that the danger zone is active. These signals will be in the form of a large red ball and a red flashing high intensity beacon. One signal will be located on a 90-foot pole near the shoreline at the north end of the danger zone, and one signal will be located on a 90-foot pole near the shoreline about one-half mile north of the south limit of the danger zone. An amber rotating beacon and warning sign will be erected on the north side of the Port Canaveral ship channel to indicate to vessels about to leave the harbor that the danger zone is in use.

(3) When the signals in paragraph (b)(2) of this section are displayed, all vessels, except authorized patrol vessels, will immediately leave the danger zone by the most direct route and stay out until the signals are discontinued.

(4) The regulations in this paragraph shall be enforced by the Commander, Air Force Missile Test Center, Patrick Air Force Base, Fla., and such agencies as he may designate.

[22 FR 4814, July 9, 1957, as amended at 23 FR 3716, May 29, 1958; 27 FR 4778, May 19, 1962]

§ 204.86 TRIDENT Basin adjacent to Canaveral Harbor at Cape Canaveral Air Force Station, Brevard County, Florida Danger Zone.

(a) *The danger zone.* From the west side of the access channel at latitude 28°24′37″, longitude 80°35′35″ to the east side of the access channel at latitude 28°24′37″, longitude 80°35′26″ and the entire basin.

(b) *Regulations.* (1) No unauthorized vessel shall enter the area. The area will be used for loading and unloading explosives. The entrance to the basin will be marked by suitable boundary signs.

(2) The regulations will be enforced by the Commanding Officer, Naval Ordnance Test Unit, Patrick Air Force Base, Florida, or such agencies he may designate.

[41 FR 17898, Apr. 29, 1976]

§ 204.90 Straits of Florida; Navy restricted area surrounding Woman Key and Ballast Key.

(a) *The danger zone.* The waters within a rectangular area, approximately 3.0 nautical miles long from east to west and 2.4 nautical miles wide from north to south, with Woman Key at or near the center, bounded on the north by latitude 24°32′37″ (approximately one nautical mile north of the north shore of Woman Key); on the east by longitude 81°56′40″ (approximately one nautical mile east of the east shore of Ballast Key); on the south by latitude 24°30′12″ (approximately one nautical mile south of the south shore of Ballast Key); and on the west by longitude 81°59′53″ (approximately one nautical mile west of the west shore of Woman Key). The danger zone will be marked by buoys located at the four corners.

(b) *The regulations.* (1) The danger zone is open to navigation except when naval operations are in progress, when no vessel or other craft shall enter or remain within the area.

(2) Since naval operations will take place in the area at frequent and irregular intervals throughout the year regardless of season, advance notice will be given of the date on which the first such operations will begin. At intervals of not more than three months thereafter, notice will be sent out that operations are continuing. Such notices will appear in the local newspapers and in "Notice to Mariners."

(3) Prior to the conduct of operations the area will be patrolled by naval craft which will warn navigation to leave the area. Upon receiving such warning any watercraft within the danger zone shall leave it and no craft shall enter the area until operations have ceased.

(4) This section shall be enforced by the Commandant, Sixth Naval District, Charleston, South Carolina, and such agencies as he may designate.

[13 FR 9559, Dec. 31, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 14 FR 2138, Apr. 30, 1949]

§ 204.95 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Fla.

(a) *The danger zones*—(1) *Operational training area.* Waters of the Straits of Florida and Gulf of Mexico southwest, west and northwest of Key West bounded as follows: Beginning at latitude 25°45′00″, longitude 82°07′00″; thence southeast to latitude 24°49′00″, longitude 81°55′00″; thence southwest to latitude 24°37′30″, longitude 82°00′30″; thence westerly to latitude 24°37′30″, longitude 82°06′00″; thence southerly to latitude 24°28′30″, longitude 82°06′00″; thence southerly to latitude 24°25′00″, longitude 82°06′30″; thence easterly to latitude 24°25′00″, longitude 81°57′00″; thence southwesterly to latitude 23°30′00″, longitude 82°19′00″; thence westerly to latitude 23°30′00″, longitude 82°46′00″; thence northwesterly to latitude 23°52′30″, longitude 83°11′00″; thence northerly to latitude 24°25′00″, longitude 83°11′00″; thence easterly to latitude 24°25′00″, longitude 83°08′00″; thence clockwise along the arc of a circle with a radius of 92 miles centered at latitude 24°35′00″, longitude 81°41′15″ to latitude 25°45′05″, longitude 82°23′30″; thence east to point of beginning.

(2) *Bombing and strafing target areas.* (i) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°33.4′ and longitude 82°10.9′, not to include land area and area within Marquesas Keys. The target located within this area, a grounded LSIL will be used for bombing and aircraft rocket exercises.

(ii) A circular area located directly west of Marquesas Keys with a radius of three statute miles having its center at latitude 24°35.6′ and longitude 82°11.6′, not to include land area within Marquesas Keys. The targets located within this area, pile-mounted platforms, will be used as high altitude horizontal bombing range utilizing live ordnance up to and including 1,800 pounds of high explosives. In general, these explosives will be of an air-burst type, above 1,500 feet.

(iii) A circular area located west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°34′30″ and longitude 82°14′00″.

(b) *The regulations.* (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, and give such other pertinent information as may be required in the interests of safety.

(2) Watercraft shall not be prohibited from passing through the operational training area except when the operations being conducted are of such nature that the exclusion of watercraft is required in the interest of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that bombing and strafing operations will take place over the designated target areas or that other operations hazardous to watercraft are proposed to be conducted in a specifically described portion of the overall area, all watercraft will be excluded from the target area or otherwise described zone of operations and no vessel shall enter or remain therein during the period operations are in progress.

(4) Aircraft and naval vessels conducting operations in any part of the operational training area will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave and upon being so warned the vessel shall leave immediately.

(5) The regulations in this section shall be enforced by the Commandant, Sixth Naval District, Charleston, S.C., and such agencies as he may designate.

[26 FR 11197, Nov. 28, 1961, as amended at 27 FR 2508, Mar. 16, 1962; 31 FR 13129, Oct. 11, 1966]

§ 204.100 Tampa Bay south of MacDill Air Force Base, Fla.; small-arms firing range and aircraft jettison, United States Air Force, MacDill Air Force Base.

(a) *The danger zone.* Shoreward of a line beginning at latitude 27°49′27.38″, longitude 82°29′35.83″; thence to latitude 27°49′20.14″, longitude 82°29′42.78″; thence to latitude 27°48′44.82″, longitude 82°31′10.0″; thence to latitude 27°49′09.35″, longitude 82°32′24.56″; thence to latitude 27°49′38.62″, longitude 82°33′02.44″; and thence to a point on the shore line of MacDill Air Force Base at latitude 27°50′28.57″, longitude 82°32′15.0″. The area will be marked by suitable boundary signs or buoys.

(b) *The regulations.* (1) Vessels and other watercraft are prohibited from entering the danger zone at all times.

(2) Advance notice will be given of the date on which the first firing practice shall begin. At intervals of not more than three months thereafter, notice will be sent out that firing practice is continuing. Such notices will appear in local newspapers and in "Notice to Mariners."

(3) The regulations in the section shall be enforced by the proper Air Force Authority at MacDill Air Force Base.

[13 FR 9559, Dec. 31, 1948. Redesignated at 14 FR 4904, August 9, 1949, and amended at 30 FR 884, Jan. 28, 1965]

§ 204.111 Gulf of Mexico south of Apalachee Bay, Fla.; Air Force rocket firing range.

(a) *The danger zone.* An area about 45 statute miles wide and 60 statute miles long, approximately parallel to and about 30 miles off the west coast of Florida, south of Apalachee Bay. The area is bounded as follows: Beginning at latitude 29°42′30″, longitude 84°40′00″; thence east along latitude 29°42′30″ to longitude 84°00′00″; thence southeast to latitude 28°56′00″, longitude 83°31′00″; thence southwest to latitude 28°37′00″, longitude 84°11′00″; thence northwest to latitude 29°17′30″,

longitude 84°40'00"; thence northwest to latitude 29°32'00", longitude 85°00'00"; thence northeast along a line three miles off the meanderings of the shore to the point of beginning.

(b) *The regulations.* (1) The fact that aerial rocket firing will be conducted over the danger zone will be advertised to the public through the usual media for the dissemination of information. Inasmuch as such firing is likely to be conducted during the day or night throughout the year without regard to season, such advertising of firing will be repeated at intervals not exceeding three months and at more frequent intervals when in the opinion of the enforcing agency, repetition is necessary in the interest of public safety.

(2) Prior to the conduct of rocket firing, the area will be patrolled by surface patrol boat and/or patrol aircraft to insure that no watercraft are within the danger zone and to warn any such watercraft seen in the vicinity that rocket firing is about to take place in the area. When aircraft is used to patrol the area, low flight of the aircraft across the bow will be used as a signal or warning.

(3) Any such watercraft shall, upon being so warned, immediately leave the area, and, until the conclusion of the firing, shall remain at such a distance that it will be safe from the fallout resulting from such rocket firing.

(4) The regulations in this section shall not deny access to or egress from harbors contiguous to the danger zone in the case of regular passenger or cargo carrying vessels proceeding to or from such harbors. In the case of the presence of any such vessel in the danger zone the officer in charge shall cause the cessation or postponement of fire until the vessel shall have cleared that part of the area in which it might be endangered by the fallout. The vessel shall proceed on its normal course and shall not delay its progress unnecessarily. Masters are requested to avoid the danger zone whenever possible so that interference with firing training may be minimized.

(c) The regulations in this section shall be enforced by the Commander, Moody Air Force Base, Valdosta, Georgia, and such agencies as he may designate.

[21 FR 2944, May 3, 1956, as amended at 22 FR 3755, May 29, 1957]

§ 204.112 Gulf of Mexico, south of St. George Island, Fla.; test firing range.

(a) *The danger zone.* A fan-shaped area bounded as follows:

Latitude	Longitude
NW corner—29°35'15"	85°03'12"
SW corner—29°31'18"	85°07'31"
SE corner—29°30'18"	84°59'18"
NE corner—29°35'09"	85°01'53"

The seaward end of the area is an arc with a 10,500 meter radius with its center located on the south shore line of St. George Island 1,500 feet east of Cape St. George Light.

(b) *The regulations.* (1) The area shall be used from sunrise to sunset daily Mondays through Fridays for test firing helicopter armament.

(2) During firing, the entire area plus 5 miles beyond in all directions shall be kept under surveillance by one control helicopter equipped with FM and UHF communications to the Safety Office at range control to insure cease fire if an aircraft or surface vessel is observed approaching the area.

(3) The regulations in this section shall be enforced by the Commanding Officer, U.S. Army Aviation Test Board, Fort Rucker, Ala., and such agencies as he may designate.

[33 FR 4464, Mar. 13, 1968, as amended at 36 FR 15528, Aug. 17, 1971]

§ 204.113 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Florida, Drone Recovery Area, Tyndall Air Force Base, Florida.

(a) *The restricted area.* A rectangular area excluding St. George Island with the eastern boundary of the area west of the channel through St. George Island within the following co-ordinates: Beginning at a point designated as the northeast corner latitude 29°38'20" N, longitude 84°58'30" W; thence southeast to latitude 29°35'23" N, longitude 84°56'54" W; thence southwest to latitude 29°34'15" N, longitude 85°00'35" W; thence northwest to latitude 29°37'10" N, longitude

85°02′00″ W; thence northeast to point of beginning.

(b) *The regulations.* (1) The area will be used twice daily and during usage will be restricted to navigation for a period of one hour. It may be used freely at all other times.

(2) Patrol boats and aircraft will warn navigation out of the area before each testing period.

(3) The regulations in this section shall be enforced by the Commander, Headquarters 4756th Air Defense Wing (Weapons) U. S. Air Force, Tyndall Air Force Base, Florida, and such other agencies as he may designate.

[23 FR 5507, July 19, 1958, as amended at 23 FR 6555, Aug. 23, 1958]

§ 204.114 Gulf of Mexico south and west of Apalachicola, San Blas, and St. Joseph Bays; air-to-air firing practice range, Tyndall Air Force Base, Fla.

(a) *The danger zone.* Beginning at latitude 29°40′00″, longitude 85°21′30″, in the vicinity of Cape San Blas; thence southeasterly to latitude 29°23′00″, longitude 84°39′00″; thence southwesterly to latitude 28°39′00″, longitude 84°49′00″; thence northwesterly to latitude 29°43′00″, longitude 85°53′00″; thence northeasterly to latitude 29°56′30″, longitude 85°38′30″; and thence southeasterly to the point of beginning.

(b) *The regulations.* (1) Air-to-air firing practice will ordinarily take place in the area during the hours of daylight, seven days per week. During periods of firing, passage through the area will not be denied to cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the danger area, the officer in charge of firing practice operations will cause the cessation or postponement of fire until the vessel has cleared that part of the area within range of the weapons being used. The vessel shall proceed on its normal course and not delay its progress.

(2) Other vessels will be warned to leave the danger area during firing practice by surface patrol boat and/or patrol aircraft. When aircraft is used to patrol the area, low flight of the aircraft across the bow will be used as a signal or warning. Upon being so warned such vessels shall clear the area immediately.

(3) The area will be open to all vessels whenever firing practice is not being conducted.

(4) The regulations in this section shall be enforced by the Commanding Officer, Tyndall Air Force Base, Florida, and such agencies as he may designate.

[16 FR 7460, July 31, 1951, as amended at 22 FR 3755, May 29, 1957]

§ 204.120 Gulf of Mexico, southeast of St. Andrew Bay East Entrance, Small Arms Firing Range, Tyndall Air Force Base, Fla.

(a) *The danger zones*—(1) *Area No. 1.* The waters of the Gulf of Mexico, southeast of St. Andrew Bay East Entrance within a rectangular area beginning at a point on shore at latitude 30°04′32″, longitude 85°37′07″; thence to latitude 30°03′03″, longitude 85°38′42″; thence to latitude 30°02′14″, longitude 85°37′15″; thence to a point on shore at latitude 30°04′13″, longitude 85°36′47″; thence along the shoreline to the point of beginning.

(2) *Area No. 2.* The waters of the Gulf of Mexico and St. Andrew Sound within an area described as follows, but excluding Crooked Island: Beginning at a point on shore at latitude 30°02′56″, longitude 85°34′35″; thence to latitude 30°02′18″, longitude 85°36′18″; thence to latitude 30°01′24″, longitude 85°35′40″; thence to latitude 30°00′45″, longitude 85°34′41″; thence to a point on shore at latitude 30°02′10″, longitude 85°33′42″; thence along the shore line to the point of beginning.

(b) *The regulations.* (1) No vessel or other craft shall enter or remain in the areas during periods of firing. Area No. 1 will be used for firing practice between 6:30 a.m. and 5:00 p.m., as scheduled, Monday through Friday, with possibly some sporadic firings on Saturdays and Sundays. A 10′ × 18′ red flag will be displayed on a pole at the shoreline whenever firing is in progress.

(2) Area No. 2 will be operated on a sporadic schedule, with firings likely each day including Saturdays, Sundays, and holidays, between the hours

of 6:00 a.m. and 5:00 p.m. A 10′ × 18′ red flag will be displayed on a pole at the shore line whenever firing is in progress.

(3) The regulations in this section shall be enforced by the Commanding Officer, Tyndall Air Force Base, Florida, and such agencies as he may designate.

[Regs., Dec. 9, 1974, 1522-01 (Gulf of Mexico, Fla.)-DAEN-CWO-N]

(Sec. 7, 40 Stat. 266, Chap. XIX, 40 Stat. 892; (33 U.S.C. 1, 3))

[28 FR 3394, Apr. 6, 1963, as amended at 30 FR 16267, Dec. 30, 1965; 39 FR 44752, Dec. 27, 1974]

§ 204.126 Gulf of Mexico, south of Panama City, Florida; underwater experimental areas, U.S. Navy Mine Defense Laboratory, Panama City, Florida.

(a) *The prohibited areas.* (1) A circular area with a radius of 300 yards around existing research platform No. 1 located at latitude 30°00′34″, longitude 85°54′12″.

(2) A circular area with a radius of 300 yards around existing research platform No. 2 located at latitude 30°07′14″, longitude 85°46′30″.

(b) *The regulations.* The areas will be buoyed and marked by the U.S. Coast Guard and will be prohibited to navigation at all times.

[23 FR 9031, Nov. 20, 1958]

§ 204.130 Choctawhatchee Bay, Aerial Gunnery Ranges, Air Proving Ground Center, Air Research and Development Command, Eglin Air Force Base, Fla.

(a) *The danger zones*—(1) *Aerial gunnery range in west part of Choctawhatchee Bay.* The waters of Choctawhatchee Bay within an area described as follows: Beginning at a point on the west shore at latitude 30°28′30″, longitude 86°30′00″; thence southeasterly to latitude 30°25′30″, longitude 86°21′30″; thence southwesterly to a point on the south shore at latitude 30°23′30″, longitude 86°23′00″; thence northwesterly to a point on the south shore at latitude 30°24′00″, longitude 86°25′00″; and thence northwesterly to the point of beginning; excluding that part of the area included within the aerial gunnery range along the north shore of Choctawhatchee Bay (described in paragraph (a)(2) of this section).

(2) *Aerial gunnery range along north shore of Choctawhatchee Bay.* The waters of Choctawhatchee Bay within an area described as follows: Beginning at a point in the waters of Choctawhatchee Bay at latitude 30°26′00″, longitude 86°25′30″; thence north to the shore at longitude 86°25′30″; thence southeasterly and northeasterly along the shore to longitude 86°15′00″; thence south to latitude 30°26′29″, longitude 86°15′00″; thence southwesterly to latitude 30°26′12″, longitude 86°20′35″; thence north to latitude 30°26′57″, longitude 86°20′35″; thence southwesterly to the point of beginning.

(b) *The regulations*—(1) *Aerial gunnery ranges.* (i) The aerial gunnery range in the west part of Choctawhatchee Bay (described in paragraph (a)(1) of this section) may be used by watercraft except during periods when firing is conducted. During these periods, firing will be controlled by observation posts, and watercraft will be warned by patrol boats. During periods of firing, traverse of this area shall not be denied to regular cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the area, the officer in charge of gunnery operations will cause the cessation or postponement of fire until the vessel has cleared that part of the area within the range of the weapons being used. The vessel shall proceed on its normal course and shall not delay its progress.

(ii) No vessel or other craft shall enter or remain within the aerial gunnery range along the north shore of Choctawhatchee Bay (described in paragraph (a)(2) of this section) at any time.

(2) *Enforcing Agency.* The regulations in this section shall be enforced by the Commander, Air Proving Ground Center, Eglin AFB, and such agencies as he may designate.

[26 FR 11197, Nov. 28, 1961]

§ 204.134 The Narrows and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Florida.

(a) *The restricted area.* The waters of The Narrows and the Gulf of Mexico easterly of the periphery of a circular area 5 nautical miles in radius, centered at latitude 30°23'10.074", longitude 86°48'25.433" (USC&GS Station Tuck 3), within the segment of a circle, 3 nautical miles in radius, centered at latitude 30°24'00", longitude 86°41'47".

(b) *The regulations.* (1) The area will be used intermittently during daylight hours. During periods of use the area will be prohibited to navigation.

(2) The regulations in this section shall be enforced by the Commander, Air Force Proving Ground Command, Eglin Air Force Base, Florida, and such agencies as he may designate.

[23 FR 8061, Oct. 18, 1958]

§ 204.135 Gulf of Mexico, south from Choctawhatchee Bay; guided missiles test operations area, Headquarters Air Proving Ground Command, United States Air Force, Eglin Air Force Base, Florida.

(a) *The danger zone.* The waters of the Gulf of Mexico south from Choctawhatchee Bay within an area described as follows: Beginning at a point five nautical miles southeasterly from USC&GS Station Tuck 3, at latitude 30°23'10.074", longitude 86°48'25.433", three nautical miles offshore of Santa Rosa Island; thence easterly three nautical miles offshore and parallel to shore, to a point south of Apalachicola Bay, Florida, latitude 29°32'00", longitude 85°00'00"; thence southeasterly to latitude 29°17'30", longitude 84°40'00"; thence southwesterly to latitude 28°40'00", longitude 84°49'00"; thence southeasterly to latitude 28°10'00", longitude 84°30'00"; thence 270° true to longitude 86°48'00"; thence due north along longitude 86°48'00" to the intersection of the line with a circle of five nautical miles radius centered on USC&GS Station Tuck 3, at latitude 30°23'10.074", longitude 86°48'25.433", thence northeasterly along the arc of the circle to the point of beginning.

(b) *The regulations.* (1) The area will be used intermittently during daylight hours for a week or 10 days at a time. Firing will take place once or twice a day for periods ordinarily of not more than one hour. Advance notice of such firings will be published in local newspapers and in such other manner as the District Engineer, Corps of Engineers, Mobile, Alabama, may direct.

(2) During periods of firing, passage through the area will not be denied to cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the danger area, the officer in charge of firing operations will cause the cessation or postponement of fire until the vessel shall have cleared the portion of the danger area involved. The entire area involved will be under constant observation of both surface patrol vessels and air patrol planes prior to and during periods of firing and notice will be given to vessels and tows of intention to fire by buzzing low over the vessel, upon which signal vessels and tows shall proceed on their established course promptly and clear the area as soon as possible.

(3) Other vessels will be warned to leave the immediate danger area during firing periods by surface patrol craft. Upon being so warned such vessels shall clear the area immediately. Such periods normally will not exceed two hours.

(4) The regulations in this section shall be enforced by the Commanding Officer, Air Force Proving Ground Command, Eglin Field, Florida, and such agencies as he may designate.

[16 FR 2723, Mar. 29, 1951, as amended at 22 FR 8982, Nov. 8, 1957]

§ 204.136 Waters of Santa Rosa Sound and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Florida.

(a) *The danger zones—(1) Prohibited area.* Waters of Santa Rosa Sound and Gulf of Mexico within a circle one nautical mile in radius, centered at latitude 30°23'10.074", longitude 86°48'25.433" (USC&GS Station Tuck 3). The portion of the area in Santa

Rosa Sound includes the Gulf Intracoastal Waterway between miles 209.6 and 211.4 from Harvey Lock, Louisiana.

(2) *Restricted area.* The waters of Santa Rosa Sound and Gulf of Mexico surrounding the prohibited area described in paragraph (a)(1) of this section, within a circle five nautical miles in radius centered at latitude 30°23'10.074", longitude 86°48'25.433" (USC&GS Station Tuck 3). The portion of the area in Santa Rosa Sound includes the Gulf Intracoastal Waterway between miles 204.6 and 216.4 from Harvey Lock, Louisiana.

(b) *The regulations.* (1) Experimental test operations will be conducted by the United States Air Force within the prohibited area on an intermittent basis. Such test operations shall not exceed one hour, and shall not occur more than twice weekly.

(2) No vessel or other watercraft shall enter the prohibited area, except to navigate the Gulf Intracoastal Waterway. Such vessels and other watercraft shall confine their movements to the waters within the limits of the Intracoastal Waterway and shall make the passage as promptly as possible under normal vessel speed.

(3) During periods when experimental test operations are underway no vessels or other watercraft shall enter or navigate the waters of the restricted area.

(4) Warning signs will be erected on the shore lines of Santa Rosa Sound and the Gulf of Mexico to mark the limits of the respective areas.

(5) The regulations in this section shall be enforced by the Commander, Headquarters Air Proving Ground Command, Eglin Air Force Base, Florida, and such agencies as he may designate.

[22 FR 609, Jan. 30, 1957, as amended at 23 FR 8061, Oct. 18, 1958; 23 FR 9031, Nov. 20, 1958]

§ 204.175 Lake Michigan; small-arms range adjacent to United States Naval Training Center, Great Lakes, Ill.

(a) *The danger zone.* An area bounded on the north by latitude 42°20'30"; on the east by longitude 87°47'30"; on the south by latitude 42°18'45"; and on the west by the shoreline.

(b) *The regulations.* (1) When firing affecting the danger zone is in progress, the enforcing agency will post guards at such locations that the waters in the danger zone may be observed and arrange signals whereby these guards may stop the firing should any person or vessel be seen in the waters of the danger zone. When firing is in progress, the enforcing agency will cause red flags to be displayed on shore near the rifle butts, which may be readily discernible to a person in a vessel within the danger zone.

(2) The enforcing agency is hereby authorized to use such agencies as shall be necessary to prohibit vessels from entering the area until such time as shall be convenient.

(3) If such flags are displayed it will indicate that firing is in progress, and that the waters in the danger zone are subject to impact by rounds missing or ricocheting off the impact berm and should not be entered until the flags are lowered.

(4) Wherever possible, the enforcing agency will warn the public of the contemplated times of firing and the areas involved two days in advance of the scheduled date, through the public press and the United States Coast Guard. The danger zone may, however, be closed without advance notice.

(5) [Reserved]

(6) The regulations in this section shall be enforced by the Commander, United States Naval Training Center, Great Lakes, Illinois, and such agencies as he may designate.

[13 FR 9560, Dec. 31, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 28 FR 319, Jan. 11, 1963; 45 FR 13072, Feb. 28, 1980]

§ 204.180 Waters of Lake Michigan south of Northerly Island at entrance to Burnham Park Yacht Harbor, Chicago, Illinois; danger zone adjacent to airport on Northerly Island.

(a) *Danger zone—(1) Zone A.* Beginning at a point 250 feet west of the center line of the runway at the south end of the air strip on Northerly Island; thence 183°, 500 feet; thence 90°, 600 feet; and thence northerly to a

point 250 feet east of the center line of the runway at the south end of said air strip. During the navigation season, the southeast and southwest corners of Zone A will be marked with spar buoys colored and lettered as prescribed by the United States Coast Guard.

(2) *Zone B.* Beginning at the southwest corner of Zone A; thence 183°, 500 feet; thence 90°, 700 feet; thence northerly to the southeast corner of Zone A; and thence 270° to the point of beginning. During the navigation season, the southeast and southwest corners of Zone B will be marked with spar buoys colored and lettered as prescribed by the United States Coast Guard.

(b) *Regulations.* (1) During daylight hours (from one-half hour before sunrise to one-half hour after sunset), and when the airport on Northerly Island is in operation, no vessel or other watercraft any part of which extends more than 15 feet above the water surface shall enter or remain in Zone A, and no vessel or other watercraft any part of which extends 30 feet or more above the water surface shall enter or remain in Zone B.

(2) When the airport is in operation a red ball, at least three feet in diameter, shall be continuously displayed at the northeast and northwest corners of Zone A. These balls shall not be displayed when the airport is not in operation.

[12 FR 6665, Oct. 9, 1947. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 15 FR 5022, Aug. 4, 1950; 36 FR 5911, Mar. 31, 1971]

§ 204.187 Lake Erie, west end, north of Erie Ordnance Depot, Lacarne, Ohio.

(a) The danger zone: Consists of the waters of Lake Erie within:

(1) *Danger Area I.* The sector of a circle with a radius of 6,500 yards centered at latitude 41°32′30″ N., longitude 33°01′00″ W., and intersecting the southwest boundary of Area II at latitude 41°35′00″ N., longitude 83°03′22″ W., and the southeast boundary of Area II at latitude 41°34′20″ N., longitude 82 57′10″ W.

(2) *Danger Area II (Includes Area I).* The area bounded as follows: Beginning at latitude 41°32′30″ N., longitude 83°01′00″ W.; thence to latitude 41°35′00″ N., longitude 83°03′22″ W.; thence to latitude 41°36′00″ N., longitude 83°03′24″ W.; thence to latitude 41°41′30″ N., longitude 83°07′30″ W.; thence to latitude 41°41′30″ N., longitude 83°00′00″ W.; thence to latitude 41°35′40″ N., longitude 82°54′50″ W.; and thence to the point of beginning.

(b) *Types of firing*—(1) *Danger Area I.* Small arms impact area.

(2) *Danger Area II.* Ground-based artillery, antiaircraft artillery and automatic weapons impact area.

(c) Authorized dates and hours of firing:

(1) *Danger Area I.* 6 a.m. to 6 p.m., e.s.t./e.d.t., daily; actual firing dates and hours within the authorized period to be announced in advance in special firing notices.

(2) *Danger Area II.* 8 a.m. to 5 p.m., e.s.t./e.d.t., daily except on Saturdays, Sundays, and holidays; actual firing dates and hours scheduled within authorized period to be announced in advance in special firing notices.

(d) *Restrictions*—(1) No vessel shall enter or remain in a danger area during a scheduled firing period announced in a special firing notice unless specific permission is granted in each instance by a representative of the enforcing officer.

(2) The danger areas within the danger zone shall be open to the public for navigation, fishing and other public use when firing and/or bombing is not scheduled.

(e) Enforcing agencies. The regulations in this section shall be enforced for the respective danger areas by the following commanders and such agencies as each may designate for his assigned areas. He will be responsible for proving the prescribed control, signals, and special firing notices.

(1) *Danger Area I.* Adjutant General, State of Ohio.

(2) *Danger Area II.* Adjutant General, State of Ohio.

(f) *Control and signals*—(1) *Danger Area I.* When firing into Area I, red flags will be flown from the safety tower at Camp Perry, and from flag poles in the butts of the ranges being used.

(2) *Danger Area II.* During all types of firing into Area II, red flags will be

displayed, one from the safety tower at Camp Perry and one from the safety tower at the Erie Proof Front. During firing into Area II, patrol boats will police and maintain surveillance of the area, and will be in constant radio communication with the shore station controlling the firing.

(3) [Reserved]

(4) The appropriate enforcing officer has authority to suspend any scheduled firing for reasonable periods during regattas and immediately after fishing nets are destroyed or dislocated by severe storms.

(5) The special firing notices which will include schedules of use will be published by the enforcing officer indicated in paragraph (e) of this section, in sufficient time to permit circularization to interested parties and posting on the bulletin boards of post offices in surrounding localities. Special notices will also be furnished the District Engineer, Corps of Engineers, Detroit, Mich.; the Commander, Ninth Coast Guard District, Cleveland, Ohio; the Regional Manager, Federal Aviation Administration, Chicago, Ill.; and each of the enforcing agencies listed in paragraph (e) of this section. Users of the waterway shall familiarize themselves with the current special firing notices. If in doubt, inquiry should be made to the enforcing officer indicated in paragraph (e) of this section.

(6) Agencies desiring to use the areas shall present their requirements to the respective enforcing officer who is responsible for, and is granted authority to, coordinate the firing and established priorities, for the using agencies.

(g) *Fishing permits.* Fishermen desiring to set fixed nets within the danger zone are required in every instance to have written permits. Permits for placing nets within Areas I and II may be obtained by written application to the Adjutant General, State of Ohio. Applicants for permits must state the location at which they desire to set fixed nets and the period of time which they desire the permit to cover.

(h) *Injurious chemicals.* No phosphorus or other poisonous chemicals injurious to wild fowl or fish will be discharged into the waters of the areas.

(i) The regulations in this section shall be reviewed annually by the Department of the Army to determine whether further limitations of the danger zone shall be considered.

[35 FR 17178, Nov. 7, 1970, as amended at 37 FR 20026, Sept. 23, 1972]

§ 204.195 Anaheim Bay Harbor, Calif.; Naval Weapons Station, Seal Beach.

(a) *The danger zone.* The waters of Anaheim Bay Harbor between the east and west jetties at the United States Naval Weapons Station, Seal Beach California, and the contiguous tidal channel and basin as far east as the Pacific Electric Railway bridge.

(b) *The regulations.* (1) Passage and transit of Anaheim Bay and Harbor is permitted to regularly documented vessels and power boats having a Certificate of Number assigned by the State of California Division of Small Craft Harbors subject to these regulations and the military operation within the area.

(2) All craft authorized for transit of this area and properly registered in the Security Office with the name and address of owner, description, color, and size of the craft, will be provided a decal for identification at the time of registration. The decal must be displayed on the windshield or such other area to permit security personnel to view the decal.

(3) Decals will not be transferred from one boat to another nor from one person to another, and must be destroyed when no longer desired by the individual originally registering the boat.

(4) Sailing vessels shall use auxiliary power in the inner harbor area.

(5) Rowboats, canoes, kayaks, surfboards, water skis, etc., are specifically prohibited within the danger and controlled zones.

(6) All boats shall proceed through the danger zone by the route prescribed by the enforcing agency.

(7) Speed shall not exceed 8 knots in the outer harbor and 3 knots in the inner harbor. Private boats unable to throttle down or to maintain steerage way at 3-knot speed may proceed at

the minimum speed (in excess of 3 knots) consistent with good seamanship and with waterborne explosive handling operations in progress. In case of doubt, boat operators of inbound boats will remain in the west end of the basin and outbound boats in the east end of the basin until informed of the completion of the waterborne explosive handling hazard. (The hazard is usually the hand passing of live ammunition from small boats to lighters moored at the east end of the wharf.)

(8) Smoking in boats is prohibited during the transit of this area.

(9) All craft of whatever category shall have the right at any time to seek shelter in these waters because of stress of weather. Boats entering the area during the hours of darkness, seeking shelter, or seeking transit, shall stop at the dock located near the bridge and clear with the posted sentry.

(10) Nothing in these regulations of this section shall be construed as relieving the owner or persons in command of any vessels or plant from the penalties of the law for obstructing navigation or for not complying with the navigation laws in regard to lights or signals or for otherwise violating law.

(11) All boats shall heed and obey all posted signs and/or instructions issued by security personnel of the U.S. Naval Weapons Station.

(12) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Weapons Station, Seal Beach, Calif., and such agencies as he may designate. For clarification or other information, the U.S. Naval Weapons Station, Officer of the Day, should be contacted.

[28 FR 3531, Apr. 11, 1963, as amended at 30 FR 14527, Nov. 20, 1965]

§ 204.197 Pacific Ocean in vicinity of San Pedro, Calif.; practice firing range for United States Army Reserve, National Guard, and Coast Guard units.

(a) *The danger zone.* (1) [Reserved]

(2) *Zone B.* An area extending southwest and northwest from Point Vicente, described as follows: Beginning at Point Vicente Light, latitude 33°44′30″, longitude 118°24′36″; thence southwesterly to latitude 33°43′42″, longitude 118°25′24″; thence northwesterly to latitude 33°46′30″, longitude 118°27′06″; thence southeasterly to the shore, latitude 33°44′54″, longitude 118°24′42″; and thence southerly along the shore to the point of beginning.

(b) *The regulations.* (1) Intermittent firing may take place in the danger zone on any day from sunrise to sunset.

(2) Except as otherwise provided in this paragraph, the danger zone will be open to fishing and general navigation. When firing is not scheduled the danger zone may be occupied without restriction. When firing is in progress safety observers will be maintained to warn all vessels. Notice to vacate the area, or to stop at the boundaries, will be given by siren, patrol vessel, or other effective means, and such notice shall be promptly obeyed. All vessels permitted to enter the danger zone during a firing period, other than those owned by and operated by or under the direction of the United States Government, shall proceed across the area by the most direct route and clear the area with the greatest possible dispatch. No vessel, fishing boat, or recreational craft shall anchor in the danger zone during an actual firing period.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of a vessel from any penalties for obstructing navigation, or for obstructing or interfering with range lights, or for not complying with the navigation laws in regard to lights and fog signals, or for otherwise violating any law or regulations.

(4) The regulations in this section shall be enforced by the Commanding Officer, Fort MacArthur, California, and such agencies as he may designate.

[19 FR 3795, June 22, 1954, as amended at 27 FR 2465, Mar. 15, 1962]

§ 204.200 Pacific Ocean at San Clemente Island, Calif.; Navy shore bombardment area in vicinity of Pyramid Cove.

(a) *The danger zone.* Shoreward of a line beginning at White Washed Rock on the beach bearing 199° true, 540

yards, from Pyramid Head Light; thence 160°30′ true, 1.17 nautical miles; thence 243°30′ true, 2.35 nautical miles; and thence 307° true to the beach.

(b) *The regulations.* (1) This area is used for shore bombardment by the United States Navy and all vessels shall promptly vacate the area when ordered to do so by the Navy or Coast Guard. Vessels shall not enter the area during periods scheduled for firing as published in local Notice to Mariners.

(2) Except in an emergency, no vessel shall anchor in the area without first obtaining permission from the Commandant, Eleventh Naval District, or from the Senior Officer present in the anchorage who may grant permission to anchor not exceeding the period he himself is authorized to remain there. The Senior Officer present shall advise the Commandant, Eleventh Naval District, when and to whom he assigns a berth.

[13 FR 8301, Dec. 24, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949]

§ 204.200a Pacific Ocean, San Clemente Island, Calif.; naval danger zone off West Cove.

(a) *The danger zone.* The waters of the Pacific Ocean in an area about one-half mile off the west coast of San Clemente Island basically outlined as follows:

Latitude	Longitude
33°00′40″	118°35′45″
32°57′40″	118°34′25″
32°57′10″	118°35′40″
33°00′10″	118°37′00″
33°00′40″	118°35′45″

(b) *The regulations.* (1) Intermittent firing may take place in the danger zone on any day from 8:00 a.m. until 1:00 p.m.

(2) Except as otherwise provided in this section, the danger zone will be open to fishing and general navigation.

(3) The operations officer, Naval Ordnance Test Station, Pasadena Annex, Pasadena, California, will announce firing schedules. Each week, public notices will be issued giving advance firing schedules. Such notices will appear in the local newspapers and in local "Notice to Mariners" and "Notice to Airmen." For the benefit of the fishermen and small-craft operators, announcements will be made on the marine radio.

(4) When a scheduled firing is about to be undertaken, fishing boats and other small craft will be contacted by surface patrol boats or aircraft equipped with a loudspeaker system. When so notified, all vessels shall leave the area immediately by the shortest route. Upon completion of firing or if the scheduled firing is cancelled for any reason, fishermen and small-boat operators will be notified as far in advance as possible by Marine Radio Broadcast.

(5) The regulations in this section shall be enforced by security personnel attached to the Naval Ordnance Test Station, Pasadena Annex, and by such agencies as may be designated by the Commandant, Eleventh Naval District, San Diego.

[27 FR 6829, July 19, 1962]

§ 204.200b Pacific Ocean, San Clemente Island, Calif.; naval danger zone off China Point.

(a) *The danger zone.* The waters of the Pacific Ocean within an area beginning at China Point Light; extending in a direction of 200° true, 1.59 nautical miles; thence 308° true, 5.25 nautical miles; and thence 050° true to the shoreline.

(b) *The regulations.* (1) This area is used for shore bombardment by the U.S. Navy and vessels shall not enter the area during periods scheduled for firing, as published in local "Notice to Mariners".

(2) The regulations in this section shall be enforced by the Commandant, 11th Naval District and such agencies as he may designate.

[32 FR 6138, Apr. 19, 1967]

§ 204.201a Pacific Ocean in the vicinity of Point Mugu, Calif.; naval small arms firing range.

(a) *The danger zone.* A triangular area extending westerly into the waters of the Pacific Ocean from a

point on the beach north of Point Mugu, California, described as follows: Beginning at latitude 34°05'32", longitude 119°03'57"; thence southwesterly approximately 4,000 yards to latitude 34°04'22", longitude 119°05'55"; thence northwesterly approximately 1,500 yards to latitude 34°05'01", longitude 119°06'17"; thence northeasterly to the point of beginning.

(b) *The regulations.* (1) Range firing will normally take place between 6 a.m. and 6 p.m., Thursday through Monday, and between 6 a.m. and 11:30 p.m., Tuesday and Wednesday of each week. Within the above periods, firing will be conducted as determined by the Commanding Officer, U.S. Naval Construction Battalion Center, Port Hueneme, Calif.

(2) Except as otherwise provided in this section, the danger zone will be open to fishing and general navigation.

(3) The Commanding Officer, U.S. Naval Construction Battalion Center, Port Hueneme, California, will announce firing schedules. Each week, public notices will be issued giving advance firing schedules. Such notices will appear in the local newspapers and in local "Notice to Mariners," and "Notice to Airmen." For the benefit of fishermen and smallcraft operators, announcements will be made on the marine radio.

(4) When a scheduled firing is about to be undertaken or is in progress, a large red flag will be displayed from the control tower situated at latitude 34°05'32", longitude 119°03'57", so as to be clearly visible for a distance of at least three (3) miles offshore. Safety observers will be on duty at all times when the warning flag is being displayed from the tower. Upon completion of firing, or if the scheduled firing is canceled for any reason, fishermen and small-boat operators will be notified as far in advance as possible by Marine Radio Broadcast.

(5) Vessels or other craft shall not enter or remain in the danger zone when the warning flag is being displayed unless authorized to do so by the range officer in the control tower.

(6) The regulations in this section shall be enforced by the Commandant, Eleventh Naval District, San Diego, California, and such agencies as he may designate.

[28 FR 4785, May 14, 1963; 29 FR 1318, Jan. 25, 1964, as amended at 32 FR 5834, Apr. 12, 1967]

§ 204.202 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, California; danger zones.

(a) *The area.* (1) The waters of the Pacific Ocean in an area extending seaward from the shoreline a distance of about three nautical miles and basically outlined as follows:

Station	Latitude	Longitude
Point Sal	34°54'08"	120°40'15"
1	34°54'08"	120°44'00"
2	34°52'48"	120°44'00"
3	34°50'00"	120°40'30"
4	34°44'50"	120°42'15"
5	34°41'50"	120°40'12"
6	34°35'12"	120°42'45"
7	34°33'00"	120°41'05"
8	34°30'40"	120°37'29"
9	34°30'40"	120°30'10"
10	34°30'40"	120°37'29"
11	34°24'18"	120°30'00"
12	34°23'34"	120°27'05"
13	34°24'21"	120°24'40"
14	34°27'20"	120°24'40"
Point Sal	34°54'08"	120°40'15"

(2) The danger area described in paragraph (a)(1) of this section will be divided into zones in order that certain firing tests and operations, whose characteristics as to range and reliability permit, may be conducted without requiring complete evacuation of the entire area. These zones are described as follows:

(i) *Zone 1.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°30'40", longitude 120°30'10" thence due west to latitude 34°30'40", longitude 120°37'29"; thence due north to the shoreline at latitude 34°33'15", longitude 120°37'29".

(ii) *Zone 2.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°33'15", longitude 120°37'29"; thence due south to latitude 34°30'40", longitude 120°37'29"; thence to latitude 34°33'00", longitude 120°41'05"; thence to latitude 34°34'32", longitude 120°42'30"; thence due east to the

shoreline at latitude 34°34′32″, longitude 120°39′03″.

(iii) *Zone 3.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°34′32″, longitude 120°39′03″; thence due west to latitude 34°34′32″, longitude 120°42′15″; thence to latitude 34°35′12″, longitude 120°42′45″; thence to latitude 34°37′15″, longitude 120°41′55″; thence due east to the shoreline at latitude 34°37′15″; longitude 120°38′00″.

(iv) *Zone 4.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°37′15″, longitude 120°38′00″; thence due west to latitude 34°37′15″, longitude 120°41′55″; thence to latitude 34°40′00″; longitude 120°40′50″; thence due east to the shoreline at latitude 34°40′00″, longitude 120°36′45″.

(v) *Zone 5.* An area extending seaward about 3 nautical miles from the shoreline beginning at latitude 34°40′00″, longitude 120°36′45″; thence due west to latitude 34°40′00″; longitude 120°40′50″; thence to latitude 34°41′50″, longitude 120°40′12″; thence to latitude 34°44′50″, longitude 120°42′15″; thence to latitude 34°45′28″, longitude 120°42′05″; thence due east to the shoreline at Purisima Point latitude 34°45′28″, longitude 120°38′15″.

(vi) *Zone 6.* An area extending seaward about 3 nautical miles from the shoreline beginning at Purisima Point latitude 34°45′28″, longitude 120°38′15″; thence due west to latitude 34°45′28″, longitude 120°42′05″; thence to latitude 34°50′00″, longitude 120°40′30″ thence due east to the shoreline at latitude 34°50′00″, longitude 120°36′30″.

(vii) *Zone 7.* An area extending seaward about 3 nautical miles from the shoreline beginning at latitude 34°50′00″, longitude 120°36′30″; thence due west to latitude 34°50′00″, longitude 120°40′30″; thence to latitude 34°52″48″, longitude 120°44′00″; thence to latitude 34°54′08″, longitude 120°44′00″; thence due east to Point Sal latitude 34°54′08″, longitude 120°40′15″.

(viii) *Zone 8.* An area extending seaward with a radius of 3 nautical miles centered at Purisima Point latitude 34°45′28″, longitude 120°38′15″.

(ix) *Zone 9.* An area extending seaward about 3 nautical miles from the shoreline beginning at latitude 34°30′40″, longitude 120°30′10″; then due west to latitude 34°30′40″, longitude 120°37′29″; thence to latitude 34°26′56″, longitude 120°33′06″; thence due east to the shoreline at latitude 34°26′56″, longitude 120°28′10″.

(x) *Zone 10.* An area extending seaward about 3 nautical miles from the shoreline beginning at latitude 34°26′56″, longitude 120°28′10″; thence due west to latitude 34°26′56″, longitude 120°33′06″; thence to latitude 34°24′18″, longitude 120°30′00″; thence to latitude 34°23′34″, longitude 120°27′05″; thence shoreward to latitude 34°26′56″, longitude 120°28′10″.

(xi) *Zone 11.* An area extending seaward about 3 nautical miles from the shoreline beginning at latitude 34°26′56″, longitude 120°28′10″; thence seaward to latitude 34°23′34″; longitude 120°27′05″; thence to latitude 34°24′21″, longitude 120°24′40″; thence due north to the shoreline at latitude 34°27′20″, longitude 120°24′40″.

(b) The regulations. (1) Except as prescribed in this section or in other regulations, danger zones will be open to fishing, location of fixed or movable oil drilling platforms and general navigation without restrictions.

(2) The impacting of missile debris from launch operations will take place in any one or any group of zones in the danger areas at frequent and irregular intervals throughout the year. The Commander, WSMC, will announce in advance, the closure of zones hazarded by missile debris impact. Such advance announcements will appear in the weekly "Notice to Mariners." For the benefit of fishermen, small craft operators and drilling platform operators, announcements will also be made on radio frequency 2182 kc, 2638 kc, VHF channel 6 (156.30 MHZ), VHF channel 12 (156.60 MHZ), and VHF channel 16 (156.80 MHZ) for daily announcements. Additionally, information will be posted on notice boards located outside Port Control Offices (Harbormasters) at Morro Bay, Port San Luis, Santa Barbara, Ventura, Channel Islands, and Port Hueneme Harbors, and any estab-

lished harbor of refuge between Santa Barbara and Morro Bay.

(3) All fishing boats, other small craft, drilling platforms and shipping vessels with radios are requested to monitor radio frequency 2182 kc 2638 kc, VHF channel 6 (156.30 MHZ), channel 12 (156.60 MHZ), or channel 16 (156.80 MHZ) while in these zones for daily announcements of zone closures.

(4) When a scheduled launch operation is about to begin, radio broadcast notifications will be made periodically, starting at least 24 hours in advance. Additional contact may be made by surface patrol boats or aircraft equipped with a loudspeaker system. When so notified, all vessels shall leave the specified zone or zones immediately by the shortest route.

(5) The Commander, WSMC, will extend full cooperation relating to the public use of the danger area and will consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

(6) Where an established harbor of refuge exists, small craft may take shelter for the duration of zone closure.

(7) Fixed or movable oil drilling platforms located in zones identified as hazardous and closed in accordance with this regulation shall cease operations for the duration of the zone closure. The zones shall be closed continuously no longer than 72 hours at any one time. Such notice to evacuate personnel shall be accomplished in accordance with procedures as established between the Commander WSMC and the oil industry in the adjacent waters of the outer Continental Shelf.

(8) No seaplanes, other than those approved by the Commander, WSMC, may enter the danger zones during launch closure periods.

(9) The regulations in this section shall be enforced by personnel attached to WSMC and by such other agencies as may be designated by the Commander, WSMC.

(10) The regulations in this section shall be in effect until further notice. They shall be reveiwed again during September 1986.

[46 FR 47357, Oct. 2, 1981]

§ 204.202a [Reserved]

§ 204.203 Pacific Ocean at San Miguel Island, Calif.; naval danger zone.

(a) *The area.* The waters around San Miguel Island, extending about 3 miles seaward from the shoreline within the following points:

	Latitude (N)	Longitude (W)
A	34°01'32"	120°23'17"
B	33°58'48"	120°23'17"
C	33°58'48"	120°15'00"
D	34°02'50"	120°15'00"
E	34°05'45"	120°17'25"
F	34°07'00"	120°20'05"
G	34°09'18"	120°23'17"
H	34°03'09"	120°23'17"

(b) *Markers.* Range markers, as delineated below, are installed at points A and H for navigational purposes for both surface vessels and aircraft:

(1) At point A two triangular markers are installed facing southward, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, each pole being placed on the line of longitude 120°23'17" W. and near the southerly shoreline at latitude 34°01'32" N. The southernmost marker is 20 feet below the other.

(2) At point H two triangular markers are installed facing true north 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, each pole being placed on the line of longitude 120°23'17" W. and near the northwesterly shoreline at latitude 34°03'09" N. The northernmost marker is 20 feet below the other.

(c) *The regulations.* (1) Except as prescribed in this section or in other regulations, the danger zone will be open to fishing and general navigation. Bomb drops between designated hours are expected to be intermittent, and when safe to do so, commercial fishing boats and other small craft will be granted permission to proceed through the danger zone. All vessels permitted to enter the zone during a scheduled bomb drop period, other

than those owned or operated by the U.S. Government, shall proceed across the zone by the most direct route and clear the area as soon as possible. When bomb drops are not scheduled, the zone may be occupied without restriction.

(2) The anchoring, stopping, or loitering of any vessel, fishing boat, or recreational craft within the danger zone during scheduled firing/drop hours is expressly prohibited.

(3) The bomb drops will take place in the danger zone at frequent and irregular intervals throughout the year. Danger zone usage demands are identified in the Eleventh Coast Guard District, "Local Notice of Mariners." Announcements will also be made on marine radio channel 16, at 0800 local time, 1200 local time and/or 1 hour prior to bomb drop operations. Status of the zone and/or permission to enter, may be requested by calling "Plead Control" on marine channel 16 or by calling the Pacific Missile Test Center (PMTC) on telephone number (80[illegible]) 982-8280 or 982-8841.

(4) The Commander, PMTC will extend full cooperation relating to the public use of the danger zone area and will fully consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

(5) No seaplanes, other than those approved for entry by the Commander, PMTC, may enter the danger zone during firing periods.

(6) Landing or going ashore on San Miguel Island is specifically prohibited without prior permission of the Superintendent, Channel Islands National Park. Applications for such permission should be made to: Superintendent, Channel Islands National Park, 1699 Anchors Way Drive, Ventura, California 93003.

(7) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Test Center, Point Mugu, California, and by such other agencies as the Commandant, 11th Naval District, San Diego, California, may designate.

(8) The regulations in this section shall be in effect until further notice. They shall be reviewed in 1986.

[Regs., Nov. 29, 1974, DAEN-CWO-N]

(Sec. 7, 40 Stat. 266, Chap. XIX, 40 Stat. 892; 33 U.S.C. 1, 3)

[31 FR 816, Jan. 21, 1966, as amended at 47 FR 4990, Feb. 3, 1982]

§ 204.205 Monterey Bay, Calif.

(a) *Firing range, Fort Ord, Calif.*—(1) *The danger zone.* (i) A rectangular area in Monterey Bay, the southerly limit of which is an extension seaward of the southerly line of the Fort Ord Military Reservation boundary and bears 307° true, 8,000 yards from a point on the shore at latitude 36°37′47″, longitude 121°50′28″, and the northerly limit of which is a line bearing 307° true, 8,000 yards, from a point on the shore at latitude 36°41′57″, longitude 121°48′30″, opposite Marina, Monterey County, California. The seaward boundary is a straight line joining the outer ends of the southerly and the northerly boundaries at the 8,000 yard range and is approximately parallel to the shore.

(ii) The danger zone is divided into a short range area, extending seaward from the shore a distance of 5,000 yards measured along the southerly and northerly boundaries, and a long range area embracing the entire danger zone.

(2) *The regulations.* (i) The 5,000 yard short range area is prohibited to all vessels and craft, except those authorized by the enforcing agency, each week, between dawn and midnight from Monday through Friday and between dawn and dusk on Saturday and Sunday.

(ii) The area between the 5,000 yard short range and the 8,000 yard seaward boundary of the danger zone may be used at all times for navigation and fishing, except when advance notice of intention to use this area has been given by the enforcing agency by one or more of the following means.

(*a*) Notice published in Monterey County and Santa Cruz County daily newspapers, at least two days in advance of the date of said use.

(*b*) Display of red flags at Indian Head Beach and near the Point Pinos Lighthouse.

(*c*) Radio Broadcast.

(*d*) Notice to individual craft by a visit of a United States vessel.

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(e) Telephone advice to such fishermen's organizations as may request, in writing, that such advice be given.

(iii) The regulations in this paragraph will be enforced by the Commanding General, Fort Ord, California.

(b) *Navy mining operations area*—(1) *The danger zone.* Shoreward of a line beginning at the stack at about latitude 36°58′06″, longitude 121°54′06″; thence 230° true, 6.0 miles; thence 140° true, 7.5 miles; thence 50° true to the shore.

(2) *The regulations.* The danger zone will be used for training in various phases of mine warfare operations. During the period from August 1 to February 15, inclusive, each year, no operations will be carried on which will involve placing any obstructions in the water nor will any operations be carried on at night. During the period from February 16 to July 31, inclusive, each year, operations may be carried on which will involve laying exercise mines and other moored or bottom obstructions. In each case when moored or bottom obstructions are laid a notice to mariners will be issued giving notice of their approximate location within the danger zone, and vessels shall keep clear.

[13 FR 8301, Dec. 24, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 17 FR 4665, May 22, 1952; 19 FR 96, Jan. 7, 1954]

§ 204.215 San Pablo Bay, Calif.; target practice area, Mare Island Naval Shipyard, Vallejo.

(a) *The danger zone.* A sector in San Pablo Bay adjacent to the westerly shore of Mare Island with a radius of 4,700 yards, centered at a point bearing 316° true, 3,605 yards, from Mare Island Strait Light 1, with limiting true bearings from that center of 266°30′ and 222°.

(b) *The regulations.* The Commander, Mare Island Naval Shipyard, Vallejo, California, will conduct target practice in the area at intervals of which the public will be duly notified. At such times vessels shall stay clear.

[13 FR 8302, Dec. 24, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 27 FR 10484, Oct. 27, 1962; 37 FR 9995, May 18, 1972]

§ 204.216 San Pablo Bay, Calif.; gunnery range, Naval Inshore Operations Training Center, Mare Island, Vallejo.

(a) *The Danger Zone.* A sector in San Pablo Bay delineated by lines joining the following points:

Latitude	Longitude
38°02′08″	122°25′17″
38°02′21″	122°22′55″
38°05′48″	122°19′34″
38°07′46″	122°23′23″

NOTE: The danger zone shall be used until September 30, 1982, after which it shall be subject to review to determine the further need thereof.

(b) *The regulations.* The Commanding Officer, Coastal River Division Eleven, Department of the Navy, Mare Island, Vallejo, California, will conduct gunnery practice in the area during the period April 1 through September 30, between the hours of 10 a.m. and 3 p.m. on the first Wednesday of each month and the third full weekend (Saturday and Sunday) of June. No vessels shall enter or remain in the danger zone during the above stated periods except those vessels connected with the gunnery practice operations. All firing will be from the southerly portion of the danger zone in a northerly direction, and only during good visibility. The public will be notified prior to each firing by a Notice to Mariners issued by the U.S. Coast Guard and the area will be patrolled by boat and searched by radar to insure a clear range. A safety officer will always be aboard the firing boat to guarantee that all safety precautions are observed. The regulations in this section will be enforced by the Commandant, 12th Naval District and such agencies as he may designate.

[31 FR 13992, Nov. 2, 1966, as amended at 34 FR 5723, Mar. 27, 1969; 35 FR 9279, June 13, 1970; 42 FR 40196, Aug. 9, 1977]

§ 204.220 Strait of Juan de Fuca, Washington; air-to-surface weapon range, restricted area.

(a) *The restricted area.* A circular area immediately west of Smith Island with a radius of 1.25 nautical miles having its center at latitude 48°19′11″

North and longitude 122°54'12" West. In the center of the area will be located a lighted and radar reflective buoy to serve as a navigational aid to mariners. The area will be used for air-to-surface target practice using non-explosive training devices.

(b) *The regulations.* (1) No vessel or other watercraft shall enter or remain within the designated restricted area between 0700 and 2400 hours daily, local time except as authorized by the enforcing agency and as follows: The area will be open to commercial gill net fishing during scheduled fishing periods from 15 June through 15 October annually. The October 15 closure date will be extended by the enforcing agency if determined as advantageous to the commercial gill net fishing by the Washington State Department of Fisheries.

(2) Prior to each target practice operation the restricted area will be patrolled by naval aircraft. Those vessels found within the restricted area will be overflown by the aircraft at an altitude of not less than 300' in the direction in which the unauthorized vessel is to proceed to clear the area.

(c) The regulations in this section shall be enforced by the Commandant, Thirteenth Naval District, Seattle, Washington, and such agencies as he may designate.

[Regs., December 9, 1974, 1522-01 (Strait of Juan de Fuca, Washington)—DAEN-CWO-N]

(Sec. 7, 40 Stat. 266, Chap. XIX)

[39 FR 44753, Dec. 27, 1974; 40 FR 6502, Feb. 12, 1975]

§ 204.222 Hood Canal and Dabob Bay, Wash.; naval non-explosive torpedo testing areas.

(a) *Hood Canal in vicinity of Bangor*—(1) *The area.* All waters of Hood Canal between latitude 47°46'00" and latitude 47°42'00", exclusive of navigation lanes one-fourth nautical mile wide along the west shore and along the east shore south from the town of Bangor (latitude 47°43'28").

(2) *The regulations.* (i) The area will be used intermittently by the Navy for non-explosive torpedo ranging. Launching will be conducted only between 8:00 a.m., and sunset on days other than Saturdays, Sundays, and holidays. At no time will the navigation lanes generally paralleling the shore be closed to navigation.

(ii) Navigation will be permitted within the area at all times except when naval exercises are in progress. No vessel shall enter or remain in the area when such exercises are in progress. Prior to commencement of an exercise, the Navy will make an aerial or surface reconnaissance of the area. Vessels under way and laying a course through the area will not be interfered with, but they shall not delay their progress. Vessels anchored or cruising in the area and vessels unobserved by the Navy reconnaissance which enter or are about to enter the area while a torpedo is in the water will be contacted by a Navy patrol boat and advised to steer clear. Torpedos will be tested only when all vessels or other craft have cleared the area.

(iii) When operations are in progress, use of the area will be indicated by the presence of Naval vessels flying a "Baker" (red) flag.

(iv) Notices of temporary suspension and revival of operations will be published in local newspapers and in Notice to Mariners published by the United States Coast Guard.

(b) *Dabob Bay in the vicinity of Quilcene*—(1) *The area.* All waters of Dabob Bay beginning at latitude 47°39'27", longitude 122°52'22"; thence northeasterly to latitude 47°40'19", longitude 122°50'10"; thence northeasterly to a point on the mean high water line at Takutsko Pt.; thence northerly along the mean high water line to latitude 47°48'00"; thence west on latitude 47°48'00" to the mean high water line on the Bolton Peninsula; thence southwesterly along the mean high water line of the Bolton Peninsula to a point on longitude 122°51'06"; thence south on longitude 122°51'06" to the mean high water line at Whitney Pt.; thence along the mean water line to a point on longitude 122°51'15"; thence southwesterly to the point of beginning.

(2) *The regulations.* (i) Propeller-driven or other noise-generating craft shall not work their screws or otherwise generate other than incidental noise in the area during periods of actual testing, which will be indicated

by flashing red beacons at strategic locations, and all craft shall keep well clear of vessels engaged in such testing.

(ii) No vessel shall trawl or drag in the area.

(iii) No vessel shall anchor in the area except between the shore and the 10-fathom depth line.

(iv) Operations will normally be confined to the period from about 9:30 a.m., to 2:30 p.m., on Mondays through Fridays, and will normally consist of intermittent tests of less than 30 minutes duration, with boat passage permitted between tests. Transits of logtows and other slow-moving traffic will be arranged on a mutually satisfactory individual basis as appropriate. Emergencies or high-priority projects may occasionally cause operations outside the periods specified above. No operations will be conducted on Sundays.

(c) The regulations in this section shall be enforced by the Commandant, Thirteenth Naval District, and such agencies as he may designate.

[26 FR 6515, July 20, 1961]

§ 204.222a Bristol Bay, Alaska; air-to-air weapon range, Alaskan Air Command, U.S. Air Force.

(a) *The danger zone.* An area in Bristol Bay beginning at latitude 58°24′ N., longitude 159°10′ W.; thence to latitude 57°58′ N., longitude 158°30′ W.; thence to latitude 57°07′ N., longitude 160°20′ W.; thence to latitude 58°02′ N., longitude 161°40′ W.; and thence to the point of beginning.

(b) *The regulations.* (1) Intermittent firing will be conducted over two to three day periods about 2 hours a day between the hours of 10:00 a.m. and 4:00 p.m. during the months of May through August.

(2) The fact that practice firing is to take place over the designated area shall be advertised to the public 72 hours in advance through the usual media for the dissemination of such information. Notice to the U.S. Coast Guard and NOTAM shall be issued at least 48 hours before firing is to be conducted on the range. Information as to the dates, time, and characteristics of the firing shall be advertised in advance of each session of firing.

(3) Prior to conducting each practice firing, the danger zone shall be patrolled by aircraft to note the location of all vessels within the area. The practice firing exercise shall be conducted in the portion of the danger zone not occupied by surface craft.

(4) This section shall be enforced by the Commander, Alaskan Air Command, U.S. Air Force, Seattle, Washington, or such agencies as he may designate.

[29 FR 5947, May 6, 1964, as amended at 36 FR 6422, Apr. 3, 1971]

§ 204.222b In Bering Sea, Shemya Island Area, Alaska; meteorological rocket launching facility, Alaskan Air Command, U.S. Air Force.

(a) *The danger zone.* An arc of a circle with a 45-nautical-mile radius of the launch point centered at latitude 52°43′30″ N., longitude 174°06′05″ E extending clockwise from 110° true bearing to 200° true bearing.

(b) *The regulation.* (1) Rockets will normally be launched one each day Monday through Friday between 9 a.m. and 3 p.m. Rocket hardware will discharge into the sea 22.5 to 37.5 nautical miles off the launchsite. The instrument package with parachute will impact about 1½ hours later at an undetermined area, depending on weather conditions.

(2) All mariners entering the area will do so at their own risk and are cautioned to take evasive action as necessary.

(3) The regulation in this section shall be enforced by the Department of the Air Force, Headquarters 6th Weather Wing (MAC), Andrews Air Force Base, Washington, D.C. 20331.

(40 Stat. 266 (33 U.S.C. 1))

[36 FR 19079, Sept. 28, 1971, as amended at 42 FR 46520, Sept. 16, 1977]

§ 204.222c Blying Sound area, Gulf of Alaska, Alaska; air-to-air gunnery practice area, Alaskan Air Command, U.S. Air Force.

(a) *The danger zone.* A rhomboidal area beginning at latitude 59°51′30″ N., longitude 148°42′00″ W.; thence to latitude 59°22′30″ N., longitude 147°00′00″ W.; thence to latitude 58°52′00″ N., longitude 148°03′00″ W.; thence to lati-

tude 59°20'00" N., longitude 149°45'00" W., and thence to point of beginning.

(b) *The regulations.* (1) 20-mm. cannon will be fired at towed targets in the air. One firing mission will be conducted every 2 weeks during daylight hours only and weather permitting.

(2) The fact that practice firing is to take place over the designated area shall be advertised to the public 7 days in advance through the usual media for the dissemination of such information. Notice to the U.S. Coast Guard and NOTAM shall be issued at least 48 hours before firing is to be conducted on the range. Information as to the dates, time, and characteristics of the firing shall be advertised in advance of each session of firing.

(3) Prior to conducting each practice firing, the danger zone shall be patrolled by aircraft to note the location of all vessels within the area. The practice firing exercise shall be conducted in the portion of the danger zone not occupied by surface craft.

(4) The regulations in this section shall be enforced by the Commander, Alaskan Air Command, U.S. Air Force, Anchorage, Alaska, or such agencies as he may designate.

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[37 FR 527, Jan. 13, 1972]

§ 204.223 Pacific Ocean, Hawaii; danger zones.

(a) *Danger zones.* (1)-(2) [Reserved]

(3) *Aerial bombing and strafing target surrounding Kaula Rock, Hawaii.* The waters within a circular area with a radius of three (3) miles having its center on Kaula Rock at latitude 21°39'30", longitude 160°32'30".

(4) *Aerial bombing target and naval shore bombardment area, Kahoolawe Island, Hawaii.* The waters adjacent to Kahoolawe Island within the area encompassed by the following coordinates beginning at latitude 20°37'30", longitude 156°32'48"; thence to latitude 20°34'48", longitude 156°30'24"; thence to latitude 20°28'54", longitude 156°30'30"; thence to latitude 20°28'06", longitude 156°41'48"; thence to latitude 20°30'30", longitude 156°44'12"; thence to latitude 20°33'12", longitude 156°44'30"; thence to latitude 20°37'30", longitude 156°36'24"; thence to the beginning coordinates.

(b) *The regulations.* (1) No vessel or other craft shall enter or remain in any of the areas at any time except as authorized by the enforcing agency.

(c) *Enforcing agency.* The regulations in this section shall be enforced by Commander, Third Fleet, Pearl Harbor, Hawaii 96860, and such agencies as he/she may designate.

[20 FR 4129, June 11, 1955, as amended at 25 FR 4749, May 28, 1960; 31 FR 14255, Nov. 4, 1966; 45 FR 57126, Aug. 27, 1980]

§ 204.224 Pacific Ocean, Island of Oahu, Hawaii; danger zone.

(a) *The danger zone.* Beginning at point of origin at Kaena Point Light in latitude 21°34'42" N., longitude 158°16'54" W.; thence on a bearing of 282°30' True to latitude 21°38' N., longitude 158°33' W.; thence along the arc of a circle centered at Kaena Point Light to latitude 21°42'30" N., longitude 158°03' W.; thence on a bearing of 228° true to latitude 21°35'33" N., longitude 158°11'30" W.; thence to point of origin.

(b) *The regulations.* (1) The area will be closed to all shipping on specific dates to be designated for actual firing and no vessel or other craft shall enter or remain in the area during the times designated for firing except as may be authorized by the enforcing agency. Notification to maritime interests of specific dates of firing will be disseminated through the U.S. Coast Guard media of the Local Notice to Mariners and the NOTAMS published by the Corps of Engineers. On dates not specified for firing, the area will be open to normal maritime traffic.

(2) The regulations of this section shall be enforced by the Commanding General, United States Army, Hawaii/25th Infantry Division, APO 957, and such agencies as he may designate.

[24 FR 5999, July 28, 1959]

§ 204.224a Pacific Ocean at Barber's Point, Island of Oahu, Hawaii; danger zone.

(a) *The danger zone.* The waters within a rectangular area beginning at a point in latitude 21°17'56"N., longitude 158°05'21"W., thence to latitude

21°17'30"N., longitude 158°05'21"W.; thence to latitude 21°17'58"N., longitude 158°02'49"W., thence to latitude 21°18'24"N., longitude 158°02'49"W.; thence along the shoreline at the highwater mark along the southerly boundary of Naval Air Station, Barber's Point, to the point of beginning.

(b) *The regulations.* (1) The area is closed to all surface craft, swimmers, divers and fishermen except to craft and personnel authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Barber's Point, Hawaii, 96862, and such agencies as he/she may designate.

[31 FR 8129, June 9, 1966, as amended at 45 FR 57126, Aug. 27, 1980]

§ 204.224b Pacific Ocean at Keahi Point, Island of Oahu, Hawaii; danger zone.

(a) *The danger zone.* The waters within an area beginning at a point in latitude 21°18'21.4" N., longitude 157°59'14.2" W.; thence to latitude 21°18'11" N., longitude 158°00'17.5" W.; thence to latitude 21°17'11.8" N., longitude 158°00'06.5" W.; and thence to latitude 21°17'22.5" N., longitude 157°59'03.1" W.

(b) *The regulations.* (1) The area is closed to all surface craft, swimmers, divers, and fishermen except to craft and personnel authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Commander, Explosive Ordnance Disposal Group One, Barber's Point, Hawaii 96862 and such agencies as he/she may designate.

[31 FR 12437, Sept. 20, 1966, as amended at 45 FR 57126, Aug. 27, 1980]

§ 204.224c Marine Corps Air Station, (MCAS) Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range Danger Zone.

(a) *The Danger Zone.* The waters within a sector extending seaward a distance of 3,900 yards between radial lines bearing 352° true and 61° true, respectively, from a point on Mokapu Peninsula at latitude 21°27'17" N, longitude 157°43'51" W, exclusive of the existing 500 yard wide prohibited area. The interface between the existing 500 yard prohibited area and this danger zone is defined by three points having the following coordinates:

Point A: Latitude 21°27'59" N, Longitude 157°43'56" W
Point B: Latitude 21°27'52" N, Longitude 157°43'02" W
Point C: Latitude 21°27'38" N, Longitude 157°43'12" W

(b) *The regulations.* (1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6:00 a.m. and 11:00 p.m., Monday through Friday, and between 6:00 a.m. and 6:00 p.m., Saturday and/or Sunday, when required. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the Officer in Charge of the Range Training Facility, Headquarters and Headquarters Squadron, MCAS (telephone number 257-2067).

(2) Whenever hazardous weapons (machine guns) firing is scheduled and in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at Ulupau Crater.

(3) Whenever tactical weapons (exclusive of machine guns) firing is scheduled and in progress during daylight hours, a single large red rectangular warning flag will be flown at the two separate locations on the shore.

(4) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at Ulupau Crater.

(5) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(6) The danger zone is not considered safe for boaters whenever hazardous weapons (machine guns) firing is in progress. Hazardous weapons firing will usually be scheduled approximately twice per month, on nonconsecutive

weekdays, for about eight hours on each occasion. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever hazardous weapons firing is scheduled. Passage of vessels through the danger zone when hazardous weapons firing is in progress will be permitted, but boaters shall proceed directly through the area at best speed. Hazardous weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is scheduled, the boater will be personally requested to expeditiously vacate the danger zone by MCAS Kaneohe Bay military personnel utilizing a bull-horn from either a Marine helicopter or Navy crash boat.

(7) The danger zone may be occupied for extended periods and with caution at individual risk whenever tactical weapons (exclusive of machine guns) firing is scheduled and in progress because of the remote possibility of a rifle round from an accidental discharge impacting outside the limits of the existing prohibited area.

(8) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The Enforcing Agency.* The foregoing regulations shall be enforced by the Commanding Officer, MCAS Kaneohe Bay and such agencies as he/she may designate.

[46 FR 43044, Aug. 26, 1981]

§ 204.225a Pacific Ocean at Barking Sands, Island of Kauai, Hawaii, missile range facility.

(a) *The danger zone.* The waters within an area beginning at latitude 22°03'15" N., longitude 159°47'15" W.; thence southerly along the shoreline to latitude 22°02'45" N., longitude 159°47'18" W.; thence westerly to latitude 22°02'30" N., longitude 159°51'30" W.; thence northeasterly to latitude 22°06'30" N., longitude 159°49'30" W.; and thence southeasterly to point of beginning.

(b) *Markers.* (1) Range markers at the control point at latitude 22°03'17.4" N., longitude 159°47'12.2" W., are separated 300 feet (one pole 95.5 feet northwest and the other pole 204.5 feet southeast of this point) along a line bearing 327°10' True.

(2) Range markers at the control point at latitude 22°02'44.5" N., longitude 159°47'16.4" W., are separated 300 feet (one pole 75 feet west and the other pole 225 feet east of this point) along a line bearing 266°20' True.

(3) The range marker poles seaward from each control point are 25 feet in height above ground level. The other two poles are 45 feet above ground level.

(4) Each range marker consists of a 10-foot equilateral triangle with alternate red and white diagonal stripes.

(c) *The regulations.* Entry into the area by any person, boat, vessel or other craft is prohibited at all times. Special permission for transit through the area by the most direct route may be obtainable on an individual basis, by prior arrangement with the Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kauai, Hawaii.

[34 FR 7575, May 10, 1969]

§ 204.226 Pacific Ocean off Orote Point, Apra Harbor, Island of Guam, Marianas Islands; small arms firing range.

(a) *The danger zone.* The waters within an area delineated by a line joining the following positions:

Latitude	Longitude
13°26'03.9"	144°37'38.3"
13°25'26.0"	144°36'14.2"
13°24'51.2"	144°36'31.9"
13°25'28.7"	144°37'59.1"
13°25'43.2"	144°38'09.5"

(b) *The regulations.* (1) The danger zone shall be closed to shipping on specific dates to be designated for actual firing and no vessel or other craft shall enter or remain in the danger zone during the times designated for firing except as may be authorized by the enforcing agency. Notification to maritime interests of specific dates of firing will be disseminated by

the enforcing agency. On dates not specified for firing, the danger zone shall be open to normal maritime traffic.

(2) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Station, Guam, Marianas Islands and such agencies as he may designate.

[28 FR 5377, May 30 1963]

§ 204.227 Pacific Ocean at Kwajalein Atoll, Marshall Islands; missile testing area.

(a) *The warning area.* The waters within a circular area with a radius of 200 nautical miles having its center at latitude 8°43'00" N., longitude 167°43'00" E. Intermittent hazardous missile operations will be conducted within the area 24 hours daily, on a permanent basis.

(b) *Advisory instructions.* (1) Kwajalein Test Site will coordinate safe passage of surface shipping through the area.

(2) All ships are advised to contact Kwajalein Control (2716 KC for voice, 500 KC for CW initial contact, and 468 KC for CW working) before entering the area.

[31 FR 9850, July 21, 1966]

§ 204.228 Atlantic Ocean off north coast of Puerto Rico; practice firing areas, United States Army Forces Antilles.

(a) *The danger zones*—(1) *Westerly small-arms range.* The waters within the sector of a circle bounded by radii of 10,000 yards bearing 279° and 315° respectively, from latitude 18°28'31", longitude 66°25'37", and the included arc.

NOTE: All bearings in this section are referred to true meridian.

(2) *Camp Tortuguero artillery range.* The waters within the quadrant of a circle bounded by radii of 20,000 yards bearing 315° and 45°, respectively, from latitude 18°28'31", longitude 66°25'37", and the included arc.

(3) *Easterly small-arms range.* The waters within the sector of a circle bounded by radii of 7,210 yards bearing 45° and 70°, respectively, from a point on the southeast boundary of the artillery range 2,790 yards from its southerly end, and the included arc.

NOTE: The outer boundaries of the danger zones will not be marked, but signs will be posted along shore to warn against trespassing in the firing areas.

(b) *The regulations.* (1) The danger zones shall be open to navigation at all times except when practice firing is being conducted. When practice firing is being conducted no vessel or other craft except those engaged in towing targets or patrolling the areas shall enter or remain within the danger zones: *Provided,* That any vessel propelled by mechanical power at a speed greater than five knots may proceed through the Camp Tortuguero artillery range at any time to and from points beyond, but not from one point to another in, the danger zone, between latitudes 18°31' and 18°32', at its regular rate of speed without stopping or altering its course, except when notified to the contrary.

(2) The fact that practice firing is to take place over the designated area will be advertised to the public through the usual media for the dissemination of such information. Factual information as to the dates, time, and characteristics of the firing will be advertised in advance of each session of firing but in no case less than one week nor more than four weeks before such firing is scheduled to take place.

(3) Prior to conducting each practice firing, the entire danger zone will be patrolled by aircraft or surface vessels to insure that no watercraft are within the danger zone. Any watercraft in the vicinity will be warned that practice firing is about to take place. Any such watercraft shall, upon being so warned, leave the danger zone immediately and shall not return until such practice shall have been terminated and notification to that effect shall have been given by the patrol craft, except that vessels proceeding on a regular course through the area will be allowed to proceed out of the area without warning, and firing will not commence until such vessels are clear of the area.

(4) This section shall be enforced by the Commanding General, United

States Army Forces Antilles, and such agencies as he may designate.

[14 FR 4552, July 21, 1949. Redesignated at 14 FR 5593, Sept. 13, 1949, and amended at 15 FR 6758, Oct. 6, 1950]

§ 204.230 Atlantic Ocean and Vieques Sound, in vicinity of Culebra Island, bombing and gunnery target area.

(a) The danger zone. From Punta Resaca on the north coast of Culebra at latitude 18°20'12", longitude 65°17'29" to latitude 18°25'07", longitude 65°12'07"; thence to latitude 18°26'31", longitude 65°16'45"; thence to latitude 18°23'00", longitude 65°24'30"; thence to the charted position of nun buoy "2" at latitude 18°20'19", longitude 65°24'51"; thence to latitude 18°18'47", longitude 65°24'35"; thence to latitude 18°15'30", longitude 65°21'30"; thence to a point on the southeast coast of Cayo de Luis Pena at latitude 18°17'51", longitude 65°19'41"; and thence to Punta Tamarindo on the west coast of Culebra at latitude 18°19'12" longitude 65°19'22".

(b) *The regulations.* (1) The danger zone is subject to use as a target area for bombing and gunnery practice. It will be open to navigation at all times except when firing is being conducted. At such times no surface vessels, except those patrolling the area, shall enter or remain within the danger area. Prior to conducting each firing or dropping of ordnance the danger area will be patrolled to insure that no watercraft are within the danger area. Any watercraft in the vicinity will be warned that practice firing is about to take place and advised to vacate the area.

(2) The regulations in this section shall be enforced by the Commander, Caribbean Sea Frontier, San Juan, Puerto Rico, and such agencies as he may designate.

[Regs., June 24, 1974, 1522-15 (Atlantic Ocean, Puerto Rico)—ENG-CW-ON]

(Sec. 7, 40 Stat. 266, (33 U.S.C. 1))

[13 FR 9530, Dec. 31, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 28 FR 349, Jan. 12, 1963; 39 FR 27133, July 25, 1974; 44 FR 69298, Dec. 3, 1979]

§ 204.234 Caribbean Sea and Vieques Sound in vicinity of Eastern Vieques, bombing and gunnery target area.

(a) *The danger zone.* From Punta Conejo on the south coast of Vieques at latitude 18°06'30", longitude 65°22'33"; thence to latitude 18°03'00", longitude 65°21'00"; thence to latitude 18°03'00", longitude 65°15'30"; thence to latitude 18°11'30", longitude 65°14'30"; thence to latitude 18°12'00", longitude 65°20'00"; and thence to Cabellos Colorados on the north coast of Vieques at latitude 18°09'49", longitude 65°23'27".

(b) *Regulations.* (1) It will be open to navigation at all times except when firing is being conducted. At such times no surface vessels, except those patrolling the area, shall enter or remain within the danger area. Prior to conducting each firing or dropping of ordnance the danger area will be patrolled to insure that no watercraft are within the danger area. Any watercraft in the vicinity will be warned that practice firing is about to take place and advised to vacate the area.

(2) The regulations will be enforced by the Commander, U.S. Naval Forces Caribbean, U.S. Naval Station, Roosevelt Roads, Puerto Rico, and such agencies and subordinate commands as he/she may designate.

[Regs., June 24, 1974, 1522-15 (Atlantic Ocean, Puerto Rico)—ENG-CW-ON]

(Sec. 7, 40 Stat. 266, (33 U.S.C. 1))

[39 FR 27133, July 25, 1974, as amended at 46 FR 29935, June 4, 1981]

PART 206—FISHING AND HUNTING REGULATIONS

Sec.

206.40 Bays and estuaries tributary to the Atlantic Ocean between Montauk Point, New York, and Cape Charles, Virginia, and in the State of New York, tributary to Long Island Sound; fishing.
206.45 Hudson River, New York and New Jersey, south of Stony Point, Stony Point, New York; fishing.
206.47 Delaware Bay, New Jersey; fish pounds.
206.50 Chesapeake Bay, Maryland and Virginia, and its navigable tributaries; fishing structures.
206.60 Winyah Bay, South Carolina; fishing.

Sec.

206.93 Puget Sound Area, Washington; gill nets.

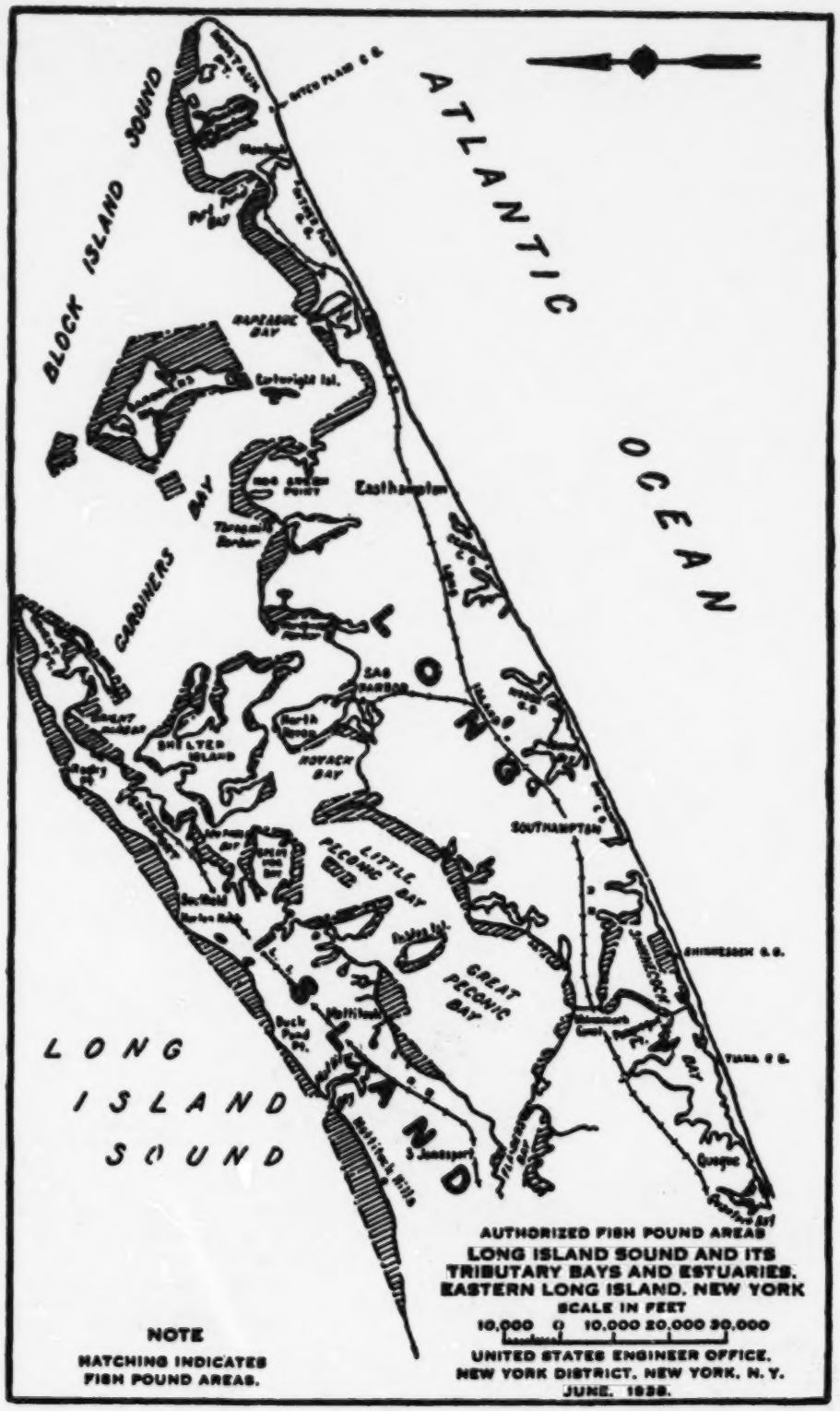
AUTHORITY: Sec. 10, 30 Stat. 1151; 33 U.S.C. 403.

§ 206.40 Bays and estuaries tributary to the Atlantic Ocean between Montauk Point, New York, and Cape Charles, Virginia, and in the State of New York, tributary to Long Island Sound; fishing.

(a) The placing of fishing structures in the waters of the bays and estuaries tributary to the Atlantic Ocean between Montauk Point, New York, and Cape Charles, Virginia, and of the bays and estuaries in the State of New York tributary to Long Island Sound, will hereafter by governed by the following regulations:

(b) *Regulations.* (1) Subject to the provisions of this section the placing of fishing structures is authorized by the Secretary of the Army in the waters of the bays and estuaries tributary to the Atlantic Ocean between Montauk Point, New York, and Cape Charles, Virginia, and of the bays and estuaries in the State of New York tributary to Long Island Sound within areas previously approved by the Secretary of the Army provided there is no interference with navigation.

(2) Any person desiring to place and operate fish traps, weirs or pounds in areas other than the approved areas shown on the following maps, in the bays and estuaries tributary to the Atlantic Ocean between Montauk Point, New York, and Cape Charles, Virginia, and of the Bays and estuaries in the State of New York tributary to Long Island Sound shall apply to the District Engineer having jurisdiction.


BLOCK ISLAND SOUND
ATLANTIC OCEAN
LONG ISLAND SOUND
GARDINERS BAY
Montauk Pt.
Napeague Bay
Eatons Neck
Northport Bay
Eatons Neck Point
Eatonwright Isl.
Easthampton
Three Mile Harbor
Sag Harbor
North Haven
Shelter Island
Noyack Bay
Southampton
Little Peconic Bay
Hallocks Isl.
Great Peconic Bay
Duck Pond Pt.
Hallock
Mattituck Hills
Shinnecock B.
Flanders B.
Riverhead
Jamesport
Orient
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NOTE
HATCHING INDICATES FISH POUND AREAS.
AUTHORIZED FISH POUND AREAS
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UNITED STATES ENGINEER OFFICE, NEW YORK DISTRICT, NEW YORK, N. Y.
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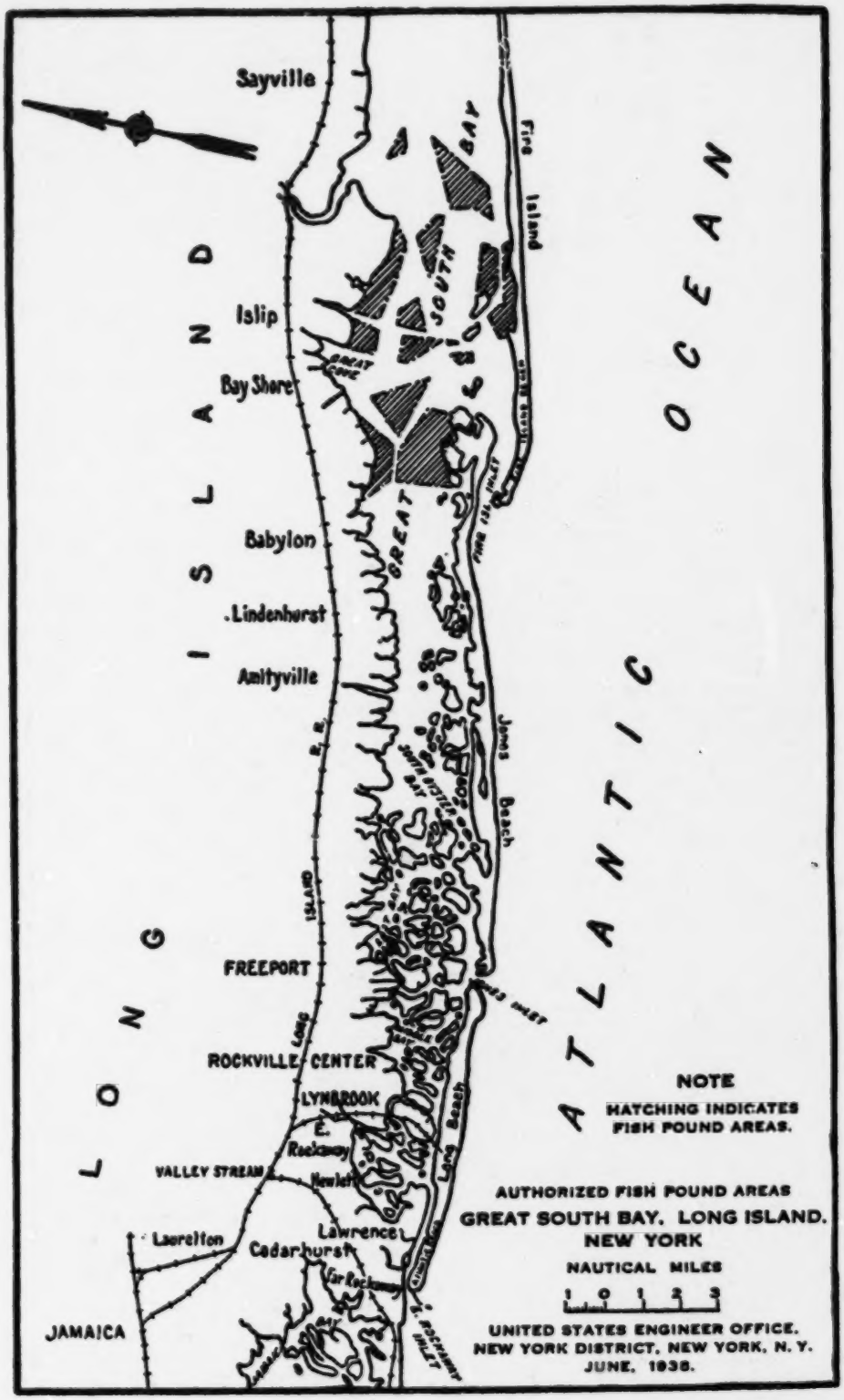
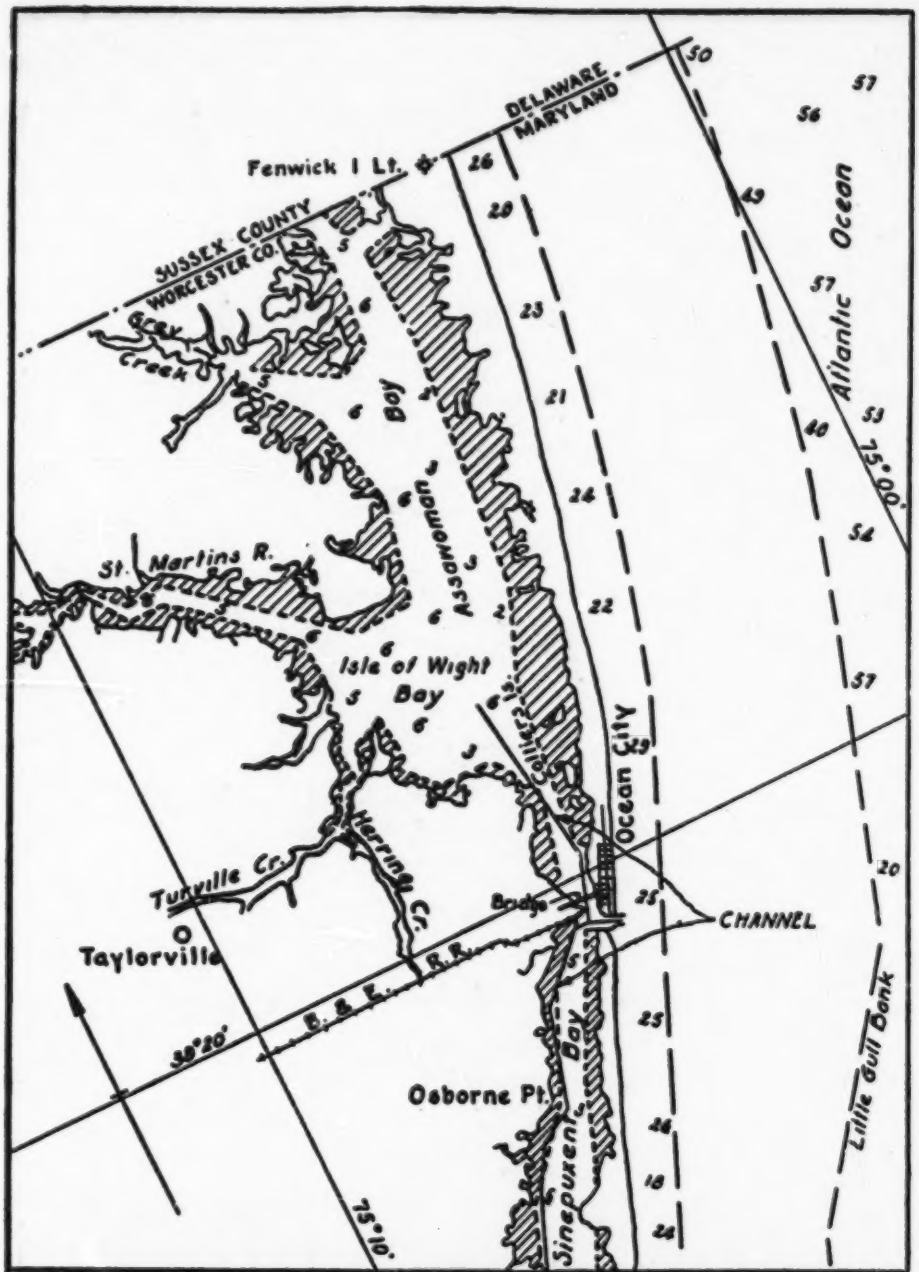
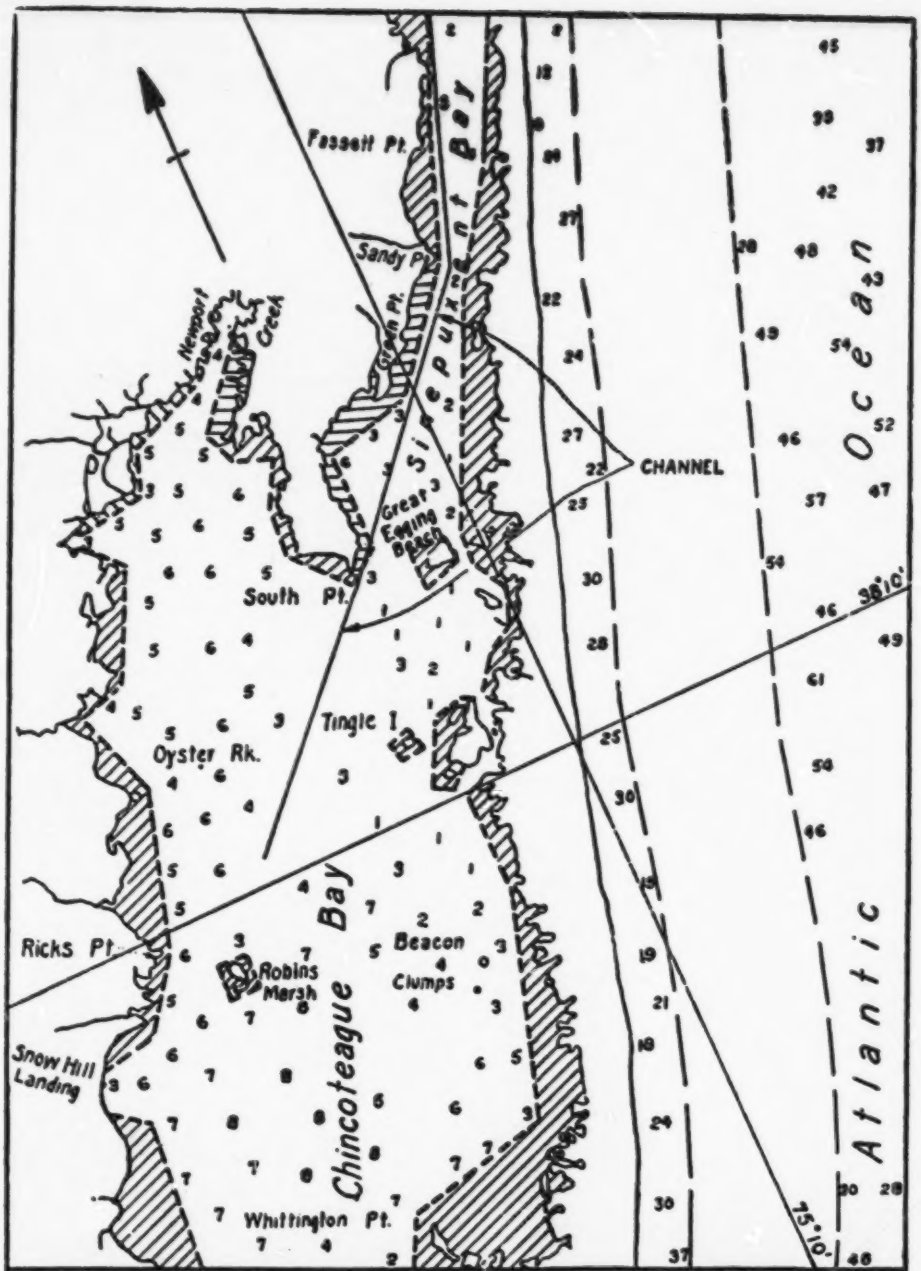

Sayville
Islip
Bay Shore
Babylon
Lindenhurst
Amityville
FREEPORT
ROCKVILLE CENTER
LYNBROOK
E. Rockaway
VALLEY STREAM
Newlet
Lawrence
Cedarhurst
Far Rockaway
Laurelton
JAMAICA
LONG ISLAND
GREAT SOUTH BAY
Fire Island
Jones Beach
Long Beach
ATLANTIC OCEAN
NOTE
HATCHING INDICATES FISH POUND AREAS.
AUTHORIZED FISH POUND AREAS
GREAT SOUTH BAY, LONG ISLAND, NEW YORK
NAUTICAL MILES
1 0 1 2 3
UNITED STATES ENGINEER OFFICE, NEW YORK DISTRICT, NEW YORK, N. Y.
JUNE, 1938.

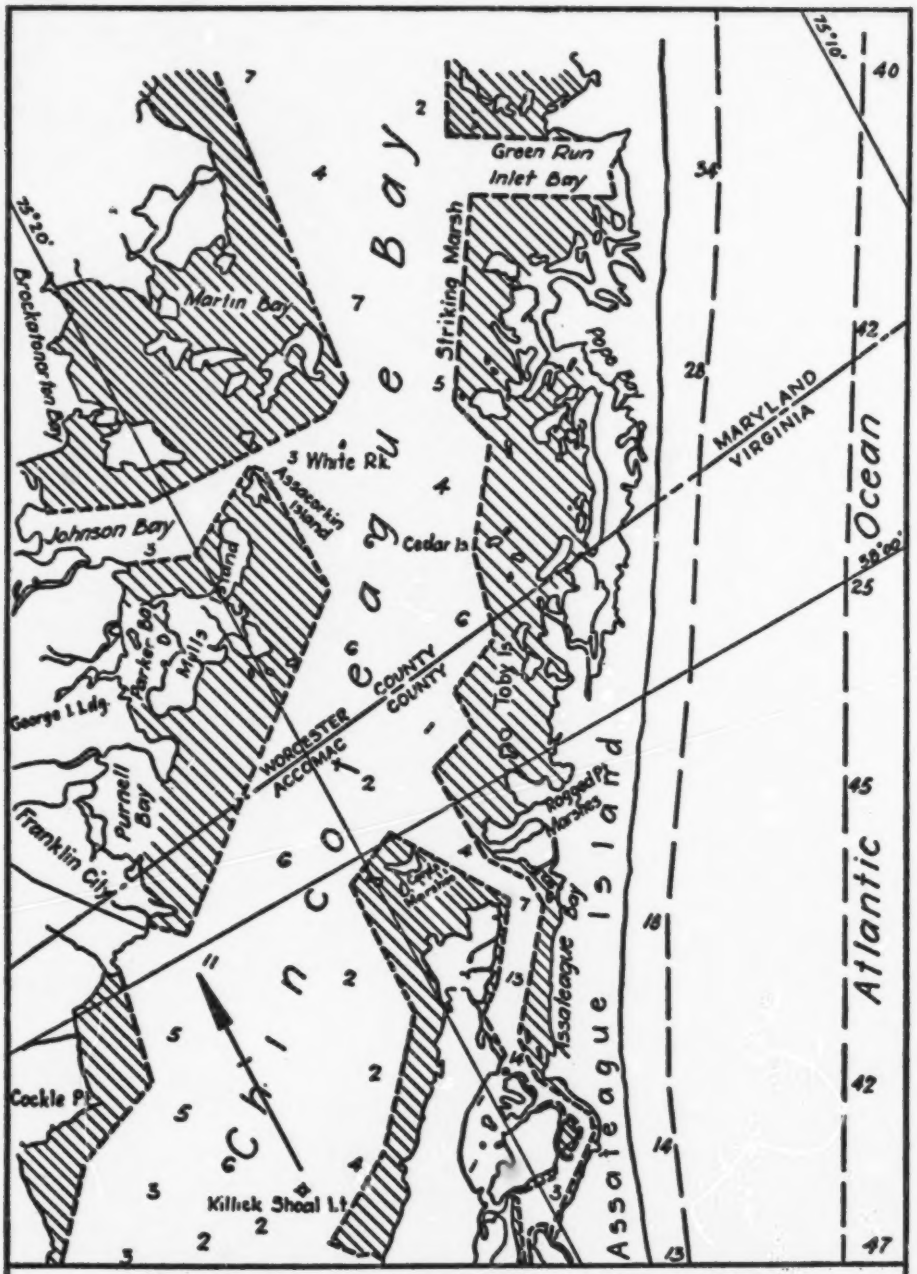
STATEN ISLAND
CONEY ISLAND
RARITAN BAY
SANDY HOOK BAY
ATLANTIC OCEAN
HEYPORT
Atlantic Highlands
Highlands
RUMSON NECK
RED BANK
LONG BRANCH
Elberon
ASBURY PARK
Spring Lake
Manasquan
Brielle
Point Pleasant
NOTE
HATCHING INDICATES FISH POUND AREAS.
AUTHORIZED FISH POUND AREAS
RARITAN AND SANDY HOOK BAYS
NEW JERSEY
NAUTICAL MILES
1 0 1 2 3
UNITED STATES ENGINEER OFFICE,
NEW YORK DISTRICT, NEW YORK, N. Y.
JUNE, 1938.


DELAWARE
MARYLAND
Fenwick I Lt.
SUSSEX COUNTY
WORCESTER CO.
Atlantic Ocean
Isle of Wight Bay
St. Martins R.
Assawoman Bay
Ocean City
Sinepuxent Bay
Herring Cr.
Turville Cr.
Taylorville
Bridge
CHANNEL
B. & E. R.R.
Osborne Pt.
Little Gull Bank
38°20'
75°10'
75°00'
LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF BALTIMORE DISTRICT.
BAYS AND ESTUARIES.
Scale in Nautical Miles
1 0 1 2 3 4 5 6



LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF BALTIMORE DISTRICT.
BAYS AND ESTUARIES.

Scale in Nautical Miles



LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF BALTIMORE AND NORFOLK DISTRICTS. BAYS AND ESTUARIES.

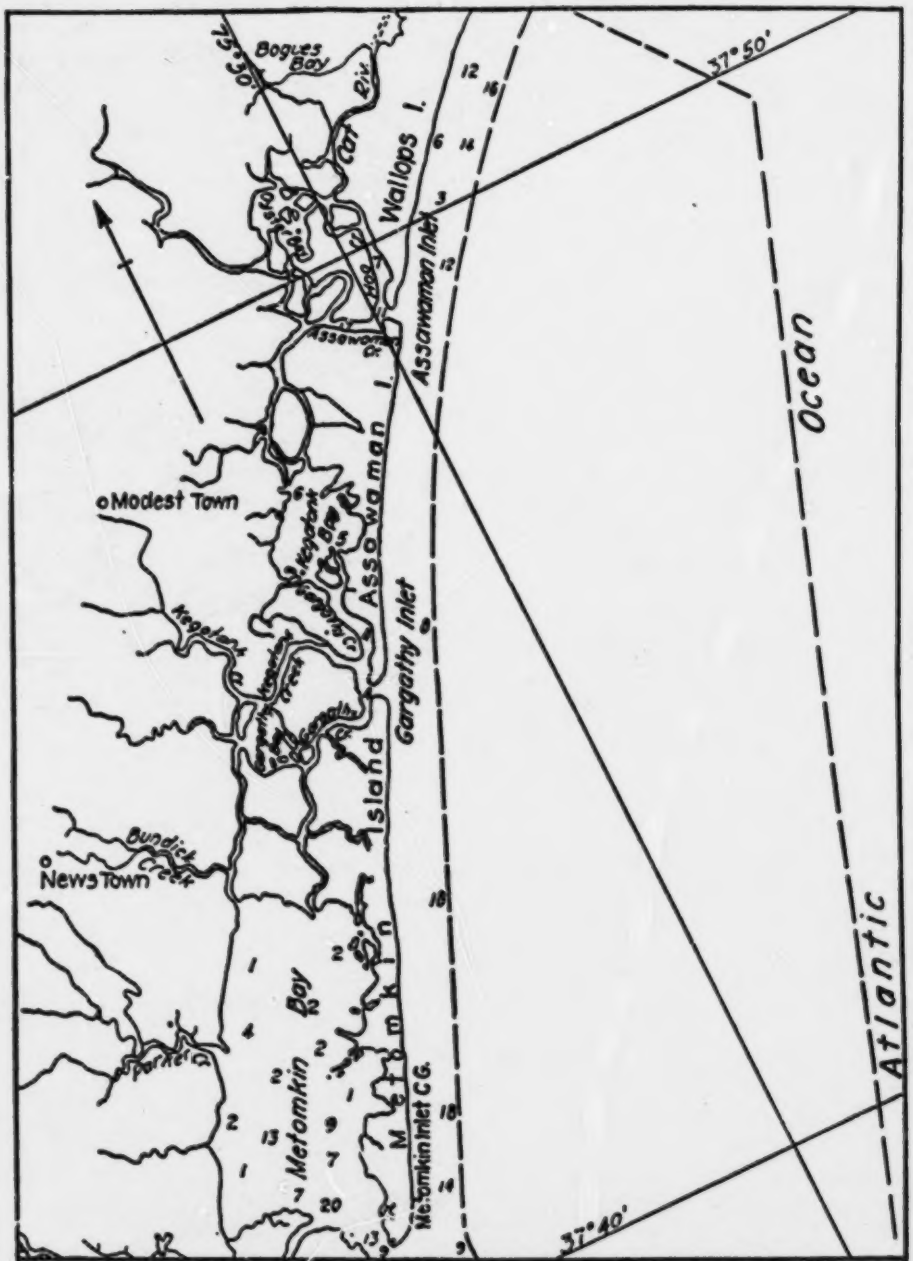
Scale in Nautical Miles.

1 0 1 2 3 4 5 6

LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF NORFOLK DISTRICT.
BAYS AND ESTUARIES.

Scale in Nautical Miles.

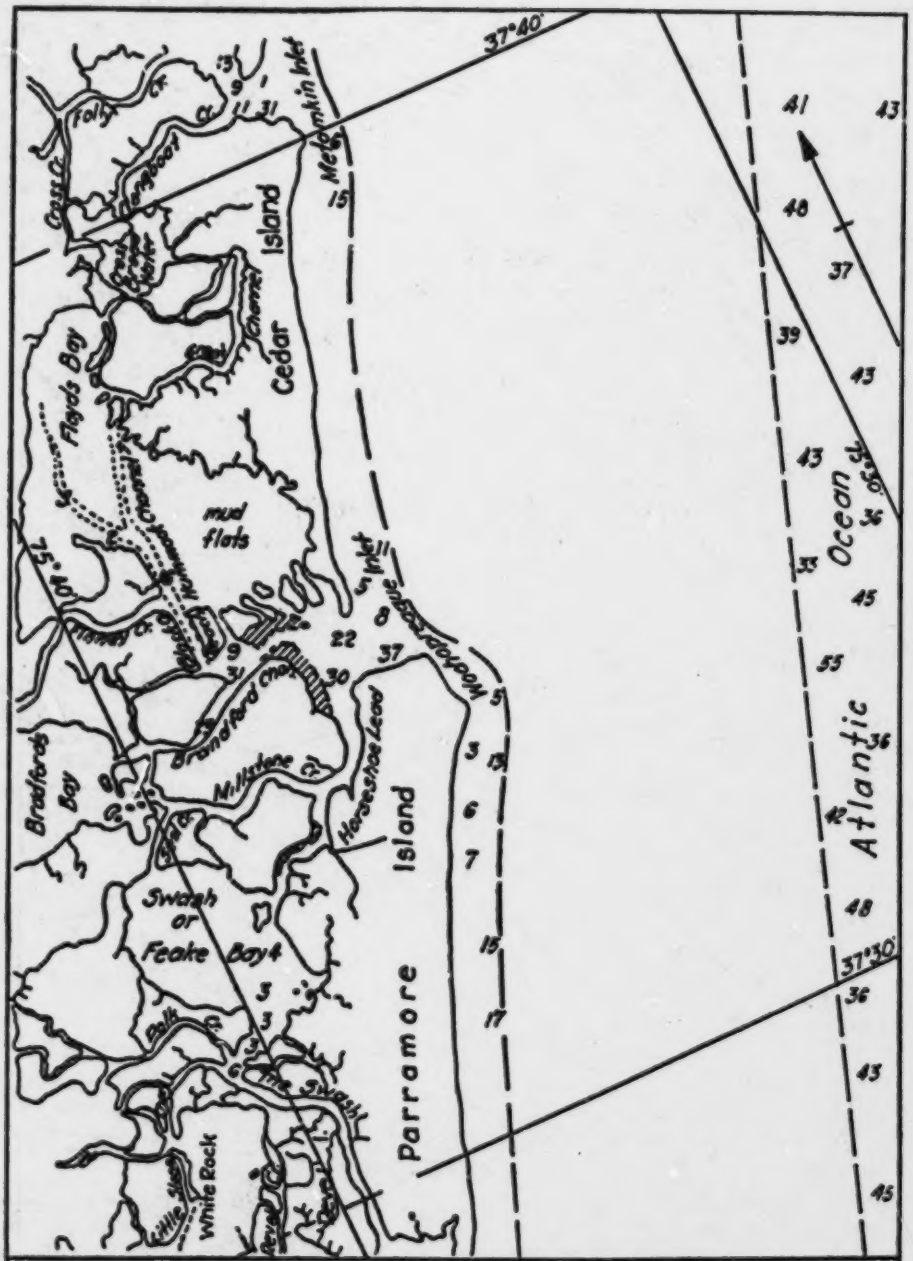
90-115 O—82——8

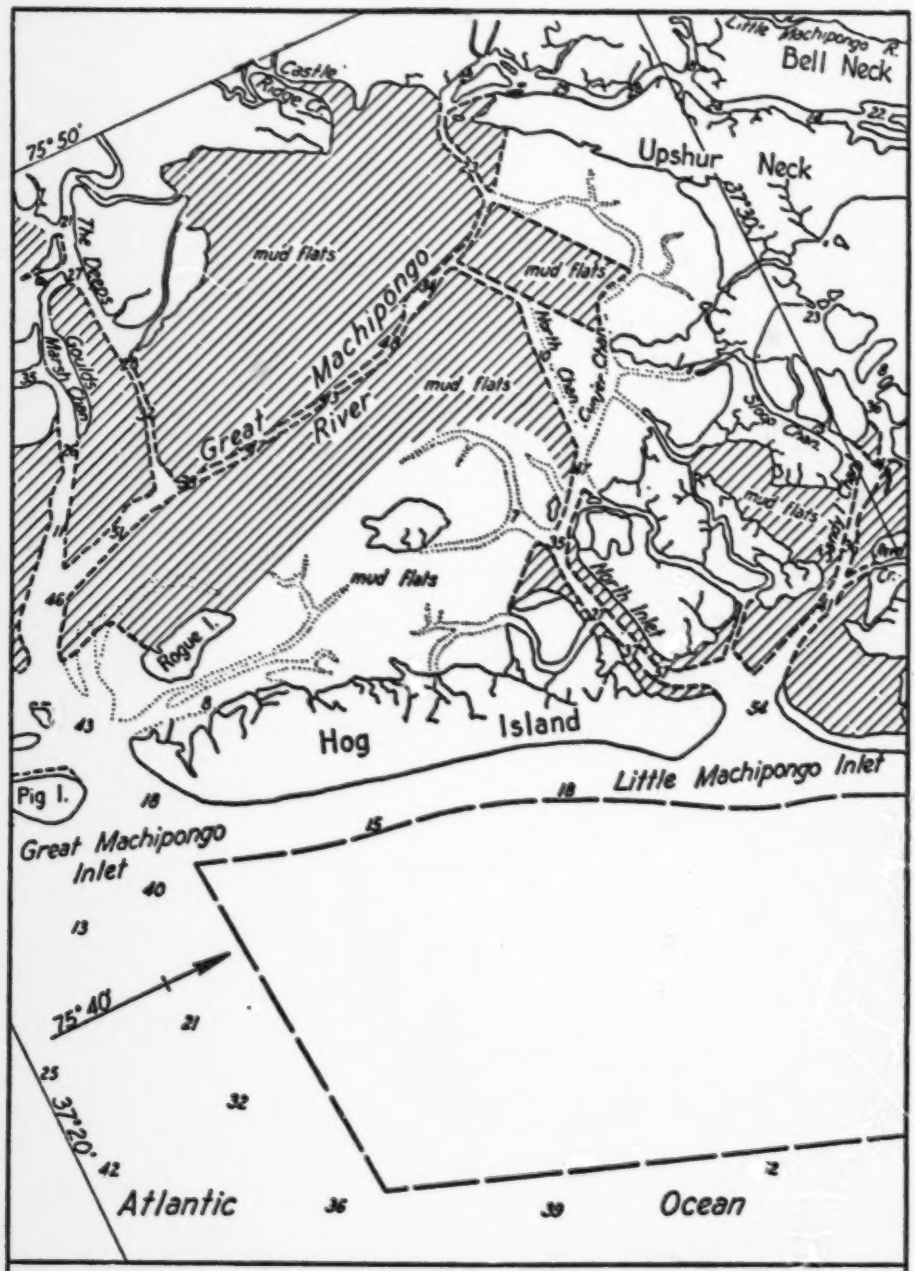


LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF NORFOLK DISTRICT.
BAYS AND ESTUARIES.

Scale in Nautical Miles.

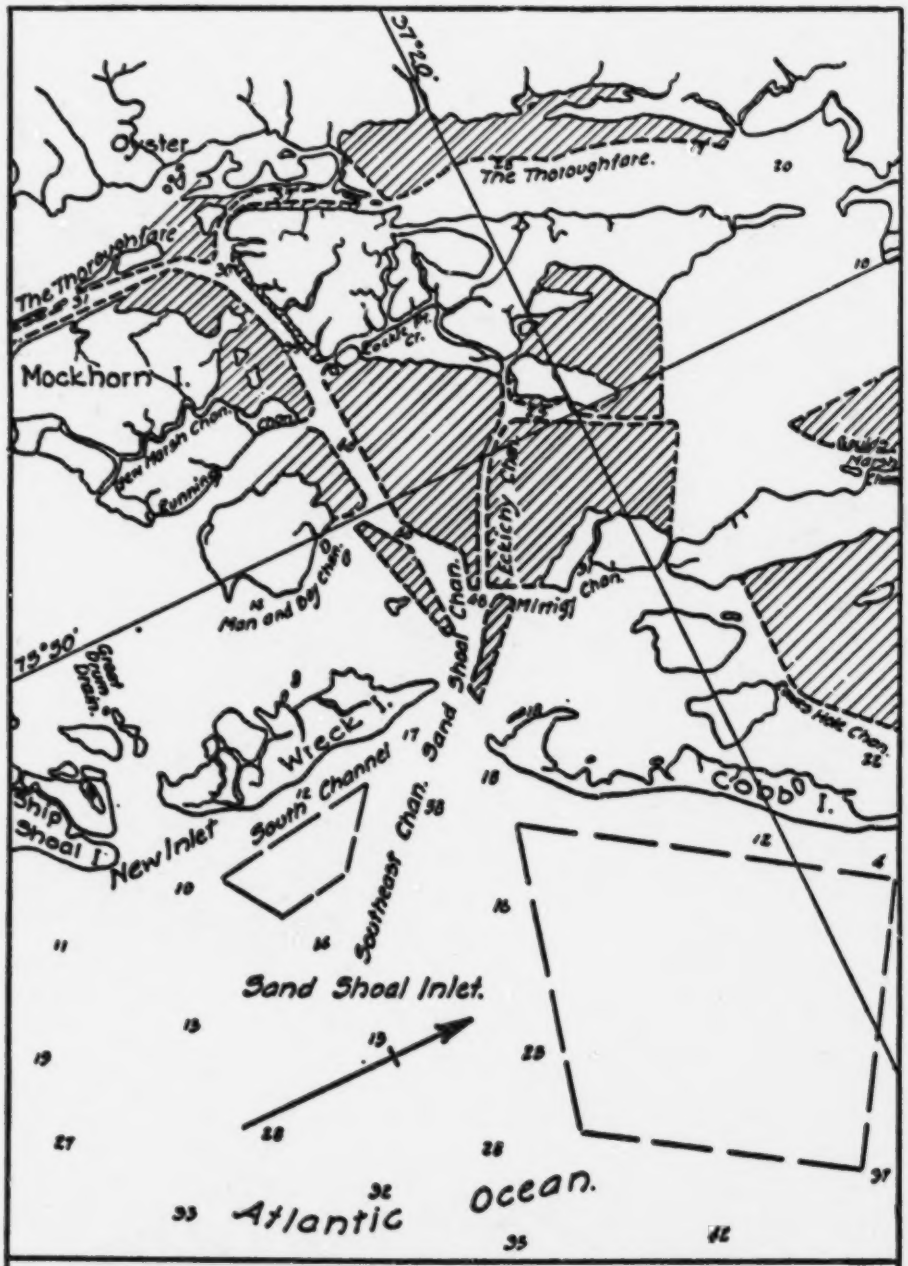
1 0 1 2 3 4 5 6


37°40'
Metompkin Inlet
Cedar Island
Floyds Bay
mud flats
Wachapreague Inlet
Broadford Creek
Millstone
Bradfords Bay
Horseshoe Lead
Parramore Island
Swash or Feake Bay
White Rock
Atlantic Ocean
37°30'
75°40'
41
43
48
37
39
43
43
36
33
45
55
36
42
48
36
43
45
LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF NORFOLK DISTRICT.
BAYS AND ESTUARIES.
Scale in Nautical Miles.
1 0 1 2 3 4 5 6



LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF NORFOLK DISTRICT.
BAYS AND ESTUARIES.

Scale in Nautical Miles.



LIMITS FOR FISH POUNDS AND TRAPS.
ATLANTIC COAST OF NORFOLK DISTRICT.
BAYS AND ESTUARIES.

Scale in Nautical Miles.

[Regs., Feb. 9, 1920, as amended at 33 FR 16564, Nov. 14, 1968; 41 FR 38770, Sept. 13, 1976; 44 FR 65978, Nov. 16, 1979]

§ 206.45 Hudson River, New York and New Jersey, south of Stony Point, Stony Point, New York; fishing.

(a) *Regulations.* Subject to the provisions of this section the placing and maintenance of shad nets and poles are authorized by the Secretary of the Army (see 33 CFR 322.4), in the Hudson River, New York and New Jersey, south of Stony Point, New York, within the following designated areas approved by the Secretary of the Army.

(b) *Approved fishing areas.* The areas described in this paragraph are approved as areas within which shad nets, poles, and other fishing structures are permitted, pursuant to the regulations contained in 33 CFR Parts 320 through 329.

(1) *Area No. A.* An area in the westerly portion of the river between West 59th and West 129th Streets, Manhattan, New York City, and bounded by straight lines between the following points:

Point No.	Latitude	Longitude
a	40°46'33.3"	74°00'04.8"
b	40°46'35.8"	74°00'10.4"
c	40°47'39.0"	73°59'20.0"
d	40°48'25.7"	73°58'44.9"
e	40°49'14.9"	73°58'14.8"
f	40°49'13.0"	73°58'09.2"
g	40°48'23.8"	73°58'40.4"
h	40°47'37.8"	73°59'14.2"

(2) *Area No. 1.* An area in the westerly portion of the river between West 140th Street, Manhattan, New York City, and the George Washington Bridge, and bounded by straight lines between the following points:

Point No.	Latitude	Longitude
1	40°49'38.1"	73°57'56.4"
2	40°49'43.0"	73°58'09.8"
3	40°51'00.0"	73°57'37.3"
4	40°50'56.2"	73°57'19.2"
5	40°50'15.1"	73°57'31.7"

(3) *Area No. 2.* An area in the westerly portion of the river, between the George Washington Bridge and Dyckman Street, Manhattan, New York City, and bounded by straight lines between the following points:

Point No.	Latitude	Longitude
6a	40°51'14.7"	73°57'07.6"
7a	40°51'17.2"	73°57'20.2"
8	40°51'49.5"	73°57'01.1"
9	40°52'19.2"	73°56'43.8"
10	40°52'13.5"	73°56'25.9"
11	40°51'43.5"	73°56'42.8"

(3a) *Area No. 2A.* An area in the westerly portion of the river, between Area No. 2 and Area No. 3 and bounded by straight lines between the following points:

Point No.	Latitude	Longitude
10	40°52'13.5"	73°56'25.9"
9	40°52'19.2"	73°56'43.8"
13	40°52'36.9"	73°56'32.4"
12	40°52'31.8"	73°56'14.4"

(4) *Area No. 3.* An area in the westerly portion of the river, between Inwood Hill Park, north of Dyckman Street, Manhattan, New York City, and south of Ashburton Avenue, City of Yonkers, New York, and bounded by straight lines between the following points:

Point No.	Latitude	Longitude
12	40°52'31.8"	73°56'14.4"
13	40°52'36.9"	73°56'32.4"
14	40°53'56.4"	73°55'54.0"
15	40°55'04.8"	73°55'28.2"
16	40°56'29.8"	73°55'02.8"
17	40°56'26.0"	73°54'43.9"
18	40°55'00.8"	73°55'09.0"
19	40°53'53.0"	73°55'35.0"

(5) *Area No. 4.* An area in the westerly portion of the river between Glenwood, City of Yonkers, New York, and Hastings on Hudson, New York, and bounded by straight lines between the following points:

Point No.	Latitude	Longitude
20	40°46'45.7"	73°54'37.6"
21	40°56'49.1"	73°54'57.0"
22	40°57'35.6"	73°54'37.0"
23	40°58'09.5"	73°54'18.5"

Point No.	Latitude	Longitude
24	40°58'53.0"	73°54 '04.8"
25	40°59'47.8"	73°53'59.2"
28	40°59'45.3"	73°53'39.8"
29	40°58'50.8"	73°53'45.2"
30	40°58'0[illegible].0"	73°53'59.8"
31	40°57'31.8"	73°54'18.0"

(5a) *Area No. 4A.* An area in the westerly portion of the river, between Hastings on Hudson, New York, and Dobbs Ferry, New York, described as follows: North of a line passing through Points Nos. 25 and 28 and extending to the westerly shore line; east of the westerly shoreline; south of a line passing through Points Nos. 26 and 27 and extending to the westerly shore line; and west of a line passing through Points Nos. 27 and 28:

Point No.	Latitude	Longitude
25	40°59'47.8"	73°53'59.2"
26	41°00'55.2"	73°53'46.7"
27	41°00'52.3"	73°53'21.2"
28	40°59'45.3"	73°53'39.8"

(6) *Area No. 5.* An area in the westerly portion of the river, between Dobbs Ferry, N.Y., and Irvington, N.Y., described as follows: North of a line passing through points Nos. 32 and 33 and extending to the westerly shoreline; east of the westerly shoreline; south of a line passing through points Nos. 34 and 35 and extending due west from point 34 to the westerly shoreline; and west of a line passing through points Nos. 32 and 35.

Point No.	Latitude	Longitude
32	41°01'09.2"	73°53'17.0"
33	41°01'12.8"	73°53'47.0"
34	41°02'24.0"	73°53'43.5"
35	41°02'09.0"	73°53'03.0"

(7) *Area No. 6.* An area in the westerly portion of the river, between Piermont Pier, New York, and Lower Nyack Landing, New York, described as follows: North of a line passing through Points Nos. 36 and 37 and extending to the westerly shoreline; east of the westerly shoreline; south of a line passing through Points Nos. 38 and 39 and extending to the westerly shore line; and west of a line passing through Points Nos. 36 and 39.

Point No.	Latitude	Longitude
36	41°02'55"	73°53'18"
37	41°02'52"	73°54'39"
38	41°05'13"	73°54'44"
39	41°04'52"	73°53'22"

(8) *Area No. 7.* An area in the westerly portion of the river between Nyack, New York, and Rockland Lake Landing, New York, described as follows: North of a line passing through Points Nos. 40 and 41 and extending to the westerly shore line; east of the westerly shore line; south of a line passing through Points Nos. 45 and 46 and extending to the westerly shore line; and west of lines joining Points Nos. 46 and 47 and Points Nos. 40 and 47.

Point No.	Latitude	Longitude
40	41°05'12"	73°53'22"
41	41°05'33"	73°54'45"
45	41°08'43"	73°54'27"
46	41°08'47.5"	73°54'17"
47	41°07'24"	73°53'25"

(9) *Area No. 8.* An area along the westerly side of the river, between Rockland Lake Landing, New York, and Bowline Point, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
48	41°08'56"	73°54'22.5"
49a	41°09'53"	73°55'06"
50	41°11'12"	73°56'45"
51b'	41°12'18"	73°57'12"
51b	41°12'14.2"	73°57'19.2"
51	41°12'15"	73°57'28"

(10) *Area No. 9.* An area along the westerly side of the river between Bowline Point, New York, and Grassy Point, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
51	41°12'15"	73°57'28"
51b	41°12'14.2"	73°57'19.2"
51b'	41°12'18"	73°57'12"
51a'	41°13'29"	73°57'42"

Point No.	Latitude	Longitude
51a	41°13'27"	73°57'49"

(11) *Area No. 10.* An area along the westerly side of the river between Grassy Point, New York, and Stony Point, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
51a	41°13'27"	73°57'49"
51a'	41°13'29"	73°57'42"
52	41°14'27"	73°58'09"

(12) *Area No. 11.* An area along the easterly side of the river between Croton Point, New York, and Montrose Point, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
64	41°10'05"	73°53'57"
64A (Hudson River, Buoy No. 10)	41°10'08"	73°54'43"
65 (Hudson River, Buoy No. 12)	41°10'50"	73°55'20"
66A (Hudson River, Buoy No. 14)	41°11'43"	73°56'10"
67	41°14'14"	73°57'04"

(13) *Area No. 12.* An area along the easterly side of the river between Phillipse Manor, New York, and Croton Point, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
60	41°05'25"	73°52'35"
61A (Hudson River, Buoy No. 4)	41°06'47.5"	73°52'37.5"
62 (Hudson River, Buoy No. 6)	41°08'17"	73°52'46"
63 (Hudson River, Buoy No. 8)	41°09'01"	73°53'09"
64A (Hudson River, Buoy No. 10)	41°10'08"	73°54'43"
64	41°10'05"	73°53'57"

(14) *Area No. 13.* An area along the easterly side of the river between Kingsland Point, New York and Tarrytown, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
56	41°04'35"	73°52'18"
57	41°04'25"	73°52'37"
58	41°04'57"	73°52'40"
59	41°04'48"	73°52'18"

(15) *Area No. 14.* An area along the easterly side of the river between Tarrytown, New York, and Irvington, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
53	41°02'40"	73°52'32"
54A (Hudson River, Buoy No. 2)	41°03'35"	73°52'32"
55	41°04'14"	73°52'35"

(16) *Area No. 15.* An area along the easterly side of the river between Irvington, New York, and Dobbs Ferry, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
69	41°02'06.5"	73°52'35.0"
70	41°01'46.8"	73°52'41.0"
71	41°01'09.0"	73°52'47.3"

(17) *Area No. 16.* An area along the easterly side of the river between Dobbs Ferry, New York, and Hastings on Hudson, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
72	41°01'0.5"	73°52'48.5"
73	41°00'40.5"	73°52'56.0"
74	41°00'18.9"	73°53'05.2"
75	40°59'46.8"	73°53'12.5"

(18) *Area No. 17.* An area along the easterly side of the river between Hastings on Hudson, New York, and Glenwood Avenue, Yonkers, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
76	40°59'10.8"	73°53'14.0"
77	40°58'28.0"	73°53'26.9"
78	40°57'49.0"	73°53'36.0"
79	40°57'27.0"	73°53'51.4"

Point No.	Latitude	Longitude
80	40°57'07.2"	73°54'00.5"

(19) *Area No. 18.* An area along the easterly side of the river between Point Street, Yonkers, New York, and Glenwood Avenue, Yonkers, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
81	40°57'04.3"	73°54'01.2"
82	40°56'53.3"	73°54'04.5"

(20) *Area No. 19.* An area along the easterly side of the river between Glenwood Avenue, Yonkers, New York, and Babcock Place, Yonkers, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
83	40°56'49.5"	73°54'05.2"
84	40°56'30.8"	73°54'10.8"

(21) *Area No. 20.* An area along the easterly side of the river between Babcock Place, Yonkers, New York, and the Municipal Pier, Yonkers, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
85	40°56'28.0"	73°54'11.8"
86	40°56'06.5"	73°54'18.9"

(22) *Area No. 21.* An area along the easterly side of the river between the National Sugar Company, Yonkers, New York, and the north pier of the Federal Sugar Works, Yonkers, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
87	40°55'59.0"	73°54'19.0"
88	40°55'50.3"	73°54'22.0"

(23) *Area No. 22.* An area along the easterly side of the river between the north pier of the Federal Sugar Works, Yonkers, New York, and Ludlow, Yonkers, New York, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
88	40°55'50.3"	73°54'22.0"
89	40°55'20.3"	73°54'31.8"

(24) *Area No. 23.* An area along the easterly side of the river between Ludlow, Yonkers, New York, and Spuyten Duyvil, New York City, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
90	40°55'17.5"	73°54'32.8"
91	40°55'00.5"	73°54'40.0"
92	40°54'51.0"	73°54'43.7"
93	40°54'36.5"	73°54'48.0"
94	40°54'24.2"	73°54'51.0"
95	40°54'15.6"	73°54'54.8"
96	40°54'03.5"	73°54'59.0"
97	40°53'44.9"	73°55'06.2"
98	40°53'35.3"	73°55'09.5"
99	40°53'25.8"	73°55'12.3"
100	40°53'15.3"	73°55'17.0"
101	40°53'00.8"	73°55'23.0"
102	40°52'51.0"	73°55'28.2"

(25) *Area No. 24.* An area along the easterly side of the river between the South Ferry Rack, Dyckman Street ferry, New York City, and Fort Washington Point, New York City, shoreward of straight lines joining the following points:

Point No.	Latitude	Longitude
103	40°52'07.0"	73°56'00.0"
104	40°51'52.2"	73°56'07.5"
105	40°51'39.8"	73°56'15.8"
106	40°51'19.8"	73°56'31.1"
107	40°51'11.0"	73°56'40.0"
108	40°51'02.7"	73°56'50.5"

[44 FR 65978, Nov. 16, 1979]

§ 206.47 Delaware Bay, New Jersey; fish pounds.

(a) *Authority.* The approval of the Secretary of the Army is given for the erection of fish pounds, traps, and nets in Delaware Bay, in the State of New Jersey, within the following designated areas.

(b) *The areas.* The pounds, traps and nets shall be within an area extending generally southerly from Egg Island

Point as follows: Beginning at Egg Island Point (latitude 39°10'30", longitude 75°08'07") and following the shoreline to North Highlands Beach (latitude 39°01'12", longitude 74°56'52"), thence following the outer limit of the oyster grounds area northwesterly to latitude 39°03'30", longitude 75°01'30", southwesterly to a point near Brandywine Shoal Light (latitude 38°59'10", longitude 75°06'50") and north-northwesterly to a point near Miah Maull Shoal Light (latitude 39°07'33", longitude 75°12'38"), and thence northeasterly along a line to the point of beginning.

(c) Fishing structure buoys or any other aids to navigation shall be as required by the U.S. Coast Guard.

[44 FR 65980, Nov. 16, 1979]

§ 206.50 Chesapeake Bay, Maryland and Virginia, and its navigable tributaries; fishing structures.

(a) *Authority.* (1) Fishermen, oystermen, and crabbers operating under authority granted by either of the States of Maryland or Virginia are hereby authorized to construct and maintain fishing structures in Chesapeake Bay and its navigable tributaries, within areas designated by the Secretary of the Army provided there is no interference with navigation.

(2) Nothing in this section shall supersede any danger zone or restricted areas established in Chesapeake Bay and its navigable tributaries by regulations prescribed by the Secretary of the Army.

NOTE: Regulations governing the use of danger zones and restricted areas are contained in Parts 204 and 207 of this chapter. Copies can be secured from the district engineer, Corps of Engineers, in charge of the locality or from the commanding officer of the using agency.

(b) *Location—fishing structure limits.* The geographic positions of control points marking the established fishing structure limits are given in paragraphs (c) and (d) of this section, and the limits are shown on United States National Ocean Survey charts. Positions of intermediate points marking the fishing structure limits which are not given may be found by referring to the charts. The points listed are connected by straight lines unless otherwise indicated. Fishing structure buoys, which are special buoys painted with horizontal black and white stripes, have been placed to mark the fishing structure limits, and regular aids to navigation are used in conjunction with the fishing structure buoys where possible. Aids to navigation used as control points may be renumbered or shifted by the Coast Guard. In such cases the fishing structure limits do not change, and the location of the control point remains fixed at the geographic position indicated. The fishing structure buoys are identified by a series of letters and numbers. The first letter preceding a number indicates the body of water, as "J2" for James River and "H2" for Hampton Roads, for buoys in the Norfolk District. The letter "B" following a number, as "1B" and "2B", indicate buoys in the Baltimore District. In localities where fishing structure limits are established, fishing structures shall not be placed outside or channelward of such limits. In localities where fishing structure limits are not established, such structures shall not be placed in dredged or natural channels or other lanes used by watercraft, or within 200 feet of the edge of any dredged channel. A clear fairway at least 200 feet wide shall be maintained from navigable channels to established boat landings. The approach to the mouth of any navigable tributary or to the mouth of any navigable branch of any tributary shall be left unobstructed. Where fishing structure limits are not established, this unobstructed approach shall lie along the channel usually followed by boats and shall have a width of not less than one-third of the width of the mouth of the tributary or branch. Within the navigable tributaries where fishing structure limits are not established, a channel in deep water of at least one-third of the total width of the waterway at the locality shall be left unobstructed.

(c) *Baltimore District*—(1) *West side of Chesapeake Bay north from Cove Point to Middle River.*

	Latitude	Longitude
Unmarked Point	38°23'09.8"	76°22'33.8"
Following line of 30-foot depth.		
"1B"	38°26'33.6"	76°26'00.0"
"3B"	38°31'07.8"	76°28'58.8"
"5B"	38°35'43.2"	76°28'43.2"
"6B"	38°38'39.0"	76°29'12.0"
"7B"	38°41'24.0"	76°30'06.0"
C "69"	38°43'34.8"	76°29'57.6"
"8B"	38°45'12.0"	76°30'00.0"
No limit line.		
"9B"	38°46'06.7"	76°29'43.1"
"10B"	38°48'18.6"	76°28'24.0"
"32B"	38°49'56.4"	76°27'45.6"
"73"	38°51'50.1"	76°27'01.1"
"1"	38°52'11.7"	76°28'54.2"
No limit line.		
(Fl. R) "4"	38°54'04.6"	76°28'38.4"
N 2	38°53'43.9"	76°27'53.4"
"11B"	38°53'13.9"	76°26'13.6"
C "75"	38°53'39.0"	76°25'53.4"
Following line of 25-foot depth to point 1,700 yards northerly of Sandy Point Light. (No limit line for a distance of 200 feet on either side of approach channel to Severn River.)		
No limit line.		
Baltimore Light.		
Unmarked Point	39°04'06.5"	76°24'24.0"
Do	39°06'42.0"	76°24'24.0"
Do	39°08'28.0"	76°25'04.0"
No limit line.		
Point bearing 329°45' true, 1,000 yards, from (Qk. Fl. R) "28C".		
"19B"		
"21B"	39°14'16.7"	76°19'33.8"
"40B"	39°15'00.0"	76°18'15.0"
"2B"	39°16'15.6"	76°20'02.4"

(2) *Fishing area southeast of mouth of Patapsco River.*

	Latitude	Longitude
Unmarked Point	39°04'39.0"	76°23'17.0"
Do	39°07'36.7"	76°23'17.0"
"34B"	39°09'59.0"	76°25'02.0"
"16B"		
"15B"	39°08'49.0"	76°21'07.5"
"14B"	39°08'03.0"	76°20'22.0"
"13B"	39°05'43.0"	76°20'54.0"
"12B"	39°04'39.0"	76°22'24.0"
Thence to point of beginning.		

(3) *Fishing area east of mouth of Patapsco River.*

	Latitude	Longitude
"35B"	39°10'46.0"	76°25'00.0"
"18B"		
"20B"		
N 2		
N "2A"	39°14'45.0"	76°17'49.2"
"22B"	39°16'13.5"	76°14'23.0"
"25B"	39°14'52.0"	76°14'46.5"
"26B"	39°12'45.0"	76°15'48.0"
"39B"		
"26B"	39°12'45.0"	76°15'48.0"
"38B"		
C 5		
"37B"		
"36B"	39°09'23.5"	76°20'21.0"
"17B"		
Thence to point of beginning.		

(4) *Vicinity of Pooles Island.* (i) No fishing structure shall be placed or maintained within 1,000 yards of Pooles Island.

(ii) During the period from October 2 to May 19, inclusive, fishing structures will be permitted in the following-described area southwest and west of Pooles Island: Beginning at the southernmost tip of Pooles Island; thence to Pooles Island Bar Light; thence to "41B" (latitude 39°16'28.0", longitude 76°18'25.2"); thence to N 2 (latitude 39°17'14.0", longitude 76°20'15.0"); thence to N 4 (latitude 39°17'56.0", longitude 76°19'54.0"); and thence to the point of beginning; excluding all waters within 1,000 yards of Pooles Island. During the period from May 20 to October 1, inclusive, no fishing structures shall be placed or maintained in this area.

(5) *Upper Chesapeake Bay and tributaries within Harford and Cecil Counties.* (i) Within Harford and Cecil Counties no fishing structures shall be placed or maintained more than 800 yards from shore or in water exceeding 18 feet in depth.

(ii) North of Rocky Point no fishing structure shall be placed or maintained within 200 feet of the buoyed channel to and in Northeast River.

(6) *East side of Chesapeake Bay south from Howell Point to Maryland-Virginia boundary line.*

	Latitude	Longitude
Howell Point Light	39°22'16.8"	76°06'40.9"
N "20"	39°20'23.2"	76°10'45.6"
Bell (Fl. R) R "18"	39°19'46.2"	76°11'33.0"
"42B"		
"23B"	39°16'35.0"	76°13'25.0"
"24B"	39°14'54.5"	76°13'59.0"

	Latitude	Longitude
Following line of 20-foot depth.		
"58B"	39°11'00.0"	76°16'47.4"
"59B"	39°09'37.2"	76°18'11.4"
"60B"	39°07'37.2"	76°18'47.6"
"27B"	39°05'00.0"	76°16'18.0"
No limit line.		
Point on line of 25-foot depth in vicinity of Bell R "2" northeast of Love Point Light.		
Following line of 25-foot depth to its intersection with north range line of measured nautical mile course at Brickhouse Bar.		
Unmarked Point	38°56'07.6"	76°22'54.0"
Bloody Point Bar Light	38°50'00.0"	76°23'30.0"
No limit line.		
Point on line of 30-foot depth 4,500 yards northerly of N "70".		
Following line of 30-foot depth.		
N "70"	38°45'27.0"	76°25'07.8"
"28B"	38°41'36.0"	76°24'12.0"
Unmarked Point	38°38'25.8"	76°20'25.2"
Following line of 21-foot depth.		
Unmarked Point	38°39'25.2"	76°18'05.4"
No limit line.		
"61B"	38°39'59.0"	76°17'26.0"
Following line of 21-foot depth.		
"62B"	38°39'51.0"	76°16'27.0"
No limit line.		
"63B"	38°39'46.0"	76°15'30.0"
Following line of 21-foot depth.		
"64B"	38°39'44.0"	76°12'28.0"
No limit line.		
Unmarked Point	38°38'40.0"	76°18'41.0"
"4B"	38°36'35.4"	76°20'13.8"
"33B"	38°33'55.2"	76°20'28.8"
No limit line.		
Point on line of 30-foot depth approximately 3,400 yards west of "33B".		
Following line of 30-foot depth to its intersection with southerly Red Sector line of Hooper Strait Light.		
Following southerly Red Sector line of Hooper Strait Light to its intersection with line of 18-foot depth.		
Following line of 18-foot depth to its intersection with the southerly Red Sector line of Hooper Strait Light approximately 4,330 yards west by south of Hooper Strait Light.		
No limit line.		
Point on line of 18-foot depth 800 yards southwest of N 2.		
Following line of 18-foot depth to point immediately south of Holland Island Bar Light.		
No limit line.		
On a line between Holland Island Bar Light and N 2 beginning at the southerly Red Sector line approximately 3,100 yards south from Holland Island Bar Light, and ending at Maryland-Virginia boundary line.		

(7) *Fishing area at mouth of Patuxent River.*

	Latitude	Longitude
Point on line of 30-foot depth due west of C 3. Following line of 30-foot depth.		
"29B"	38°40'06.0"	76°23'08.4"
C	38°38'06.0"	76°20'45.6"
"5"	38°36'38.4"	76°21'04.2"
C 3	38°35'03.6"	76°23'03.6"
Thence due west to point of beginning.		

(8) *Pocomoke Sound.*

	Latitude	Longitude
White N "A"	37°54'45.0"	75°48'03.6"
Unmarked point	37°56'08.4"	75°44'32.4"
White N "G"	37°57'00.0"	75°43'33.0"
Unmarked point	37°57'22.4"	75°42'48.6"
No limit line.		
Unmarked point	37°57'20.0"	75°42'46.9"
North End Point Light	37°56'18.5"	75°43'42.5"
Unmarked point	37°55'27.0"	75°44'07.8"
"30B"	37°54'30.0"	75°46'15.0"
Unmarked point	37°52'21.6"	75°49'07.2"

(9) *Potomac River.*

	Latitude	Longitude
Unmarked point at the intersection of the Maryland-Virginia boundary line and a line between Smith Point Light and C 1.		
C 1	37°54'12.0"	76°11'48.0"
"43B"		
"44B"		
"45B"		
"46B"		
"47B"		
"48B"		
Unmarked Point	38°01'35.6"	76°24'51.2"
Do	38°00'05.9"	76°27'02.8"

	Latitude	Longitude
Do	37°59'33.5"	76°26'51.5"
No limit line.		
Beacon (Fl. R) "6"	37°59'37.0"	76°27'11.3"
Unmarked Point	38°00'00.0"	76°27'19.2"
Do	38°00'16.8"	76°27'18.7"
Do	38°01'45.2"	76°25'08.7"
Do	38°03'04.8"	76°27'27.8"
Do	38°02'06.8"	76°29'55.3"
Beacon (Fl.) "3"	38°01'51.0"	76°32'12.7"
No limit line.		
Unmarked Point	38°02'10.2"	76°32'15.1"
Beacon (Fl.) "2"	38°02'24.0"	76°30'06.0"
"49B"	38°03'17.8"	76°27'50.2"
"50B"		
(Fl.) "9"	38°07'05.9"	76°33'19.7"
"51B"	38°09'27.8"	76°35'51.1"
"52B"		
"53B"	38°11'05.9"	76°44'33.5"
No limit line.		
N "14"	38°12'05.0"	76°44'36.1"
Unmarked Point	38°12'12.3"	76°43'40.0"
C "1"	38°12'36.0"	76°43'42.0"
No limit line.		
Unmarked Point	38°12'37.5"	76°43'24.0"
Do	38°12'14.8"	76°43'20.6"
Do	38°12'23.6"	76°42'11.2"
N (RB)	38°12'42.0"	76°42'12.0"
No limit line.		
Unmarked Point	38°13'23.8"	76°41'43.9"
Do	38°12'29.5"	76°41'35.2"
"54B"	38°12'16.4"	76°40'00.0"
"55B"	38°11'26.9"	76°35'49.0"
"56B"		
Unmarked Point	38°08'26.7"	76°32'58.9"
Do	38°06'32.4"	76°30'18.6"
Do	38°04'31.6"	76°26'01.9"
Do	38°06'03.2"	76°26'32.5"
Do	38°06'46.6"	76°27'37.5"
No limit line.		
Unmarked Point	38°07'06.2"	76°27'31.2"
Do	38°06'33.0"	76°26'41.8"
Do	38°07'56.2"	76°27'09.2"
No limit line.		
Unmarked Point	38°08'03.5"	76°26'40.6"
Do	38°04'15.1"	76°25'25.0"
Do	38°03'50.7"	76°24'33.1"
Do	38°05'27.2"	76°24'43.0"
No limit line.		
Unmarked Point	38°05'27.2"	76°24'43.0"
No limit line.		
Do	38°03'39.5"	76°24'09.7"
Do	38°01'25.9"	76°19'23.4"
"57B"	38°02'19.7"	76°17'26.2"

(10) ***West side of Chesapeake Bay north from Point Lookout to Cove Point.***

	Latitude	Longitude
"57B"	38°02'19.7"	76°17'26.2"
Point No Point Light	38°07'42.0"	76°17'24.0"
Unmarked Point	38°17'49.4"	76°22'00.0"
Following line of 30-foot depth.		
Unmarked Point	38°18'59.0"	76°22'22.1"
(Fl. W) "3"	38°19'03.8"	76°23'56.0"
No limit line.		
Drum Point Light	38°19'06.0"	76°25'18.0"
"31B"	38°20'48.7"	76°21'51.1"
Following line of 30-foot depth.		
Unmarked Point	38°23'09.8"	76°22'33.8"

(11) ***Fishing area at mouth of Patuxent River.***

	Latitude	Longitude
Unmarked Point	38°19'30.2"	76°22'43.8"
Following line of 30-foot depth.		
Unmarked Point	38°19'48.2"	76°23'18.7"
Do	38°20'31.6"	76°21'48.8"
Following line of 30-foot depth.		
Unmarked Point	38°19'56.9"	76°21'47.4"
Thence to point of beginning.		

(d) ***Norfolk District*—(1)** ***South side of Chesapeake Bay between Cape Henry and Willoughby Spit.***

	Latitude	Longitude
Unmarked Point 1	36°55'31.3"	76°02'44.8"
"C1"	36°55'49.9"	76°03'06.2"
"C3"		
"C5"	36°55'30.1"	76°04'35.3"
Unmarked Point 2	36°54'51.1"	76°04'21.9"
No limit line		
Unmarked Point 3	36°54'51.1"	76°06'46.7"
"C7"	36°55'52.9"	76°06'07.9"
"C9"	36°57'00.8"	76°06'07.9"
"C11"	36°57'31.1"	76°08'08.9"
Unmarked Point 4	36°55'30.4"	76°08'41.5"
No limit line		
Unmarked Point 5	36°55'49.6"	76°11'03.7"
Unmarked Point 5A	36°58'05.9"	76°10'27.0"
"C15"	36°59'09.4"	76°14'39.8"
"C17"	36°59'03.4"	76°17'43.3"
Unmarked Point 6	36°58'07.1"	76°17'43.4"

(2) ***Hampton Roads and James River*—(i)** ***From Craney Island Light to Jamestown Island (south side of river).***

	Latitude	Longitude
Unmarked Point 7	36°53'43.1"	76°23'30.0"
"H5"	36°55'38.2"	76°23'21.3"
"H1"	36°55'35.8"	76°21'08.2"
"H3"	36°56'00.0"	76°21'42.9"
"H7"	36°56'00.0"	76°23'42.4"
"N1"		
Nansemond River Light	36°54'52.3"	76°26'40.2"
No limit line		
"N2"	36°55'03.0"	76°26'46.5"
"H9"	36°56'06.1"	76°24'41.8"
"H11"		
C"1"	36°57'53.5"	76°26'42.0"
"H15"	36°59'06.9"	76°27'56.1"

	Latitude	Longitude
Unmarked Point 8	36°59'31.4"	76°28'56.3"
"J3"	37°00'32.4"	76°30'15.1"
Unmarked Point 9	37°00'44.6"	76°32'36.3"
Unmarked Point 10	37°00'40.3"	76°33'52.0"
No limit line		
Unmarked Point 11	37°00'45.0"	76°33'52.4"
Unmarked Point 12	37°00'49.3"	76°32'36.7"
"J5"	37°00'49.5"	76°31'09.0"
"J7"	37°01'50.2"	76°33'21.2"
"J13"	37°02'50.9"	76°35'33.5"
"J15"	37°02'58.0"	76°36'57.2"
"J17"	37°02'57.1"	76°38'31.5"
"J19"	37°03'09.0"	76°39'06.9"
"J21"	37°03'59.3"	76°39'29.6"
Unmarked Point 12A	37°05'24.5"	76°38'40.3"
C"25"	37°09'12.7"	76°38'35.1"
"J29"	37°11'17.0"	76°39'45.0"
"J41"	37°12'21.5"	76°41'27.0"
Unmarked Point 13	37°11'50.6"	76°43'00.5"
Unmarked Point 14	37°10'27.6"	76°44'56.5"

(ii) *North side of James River from Jamestown Island to Newport News.*

	Latitude	Longitude
Unmarked Point 15	37°11'14.0"	76°45'25.0"
Unmarked Point 16	37°10'59.3"	76°44'25.2"
Unmarked Point 17	37°11'56.6"	76°43'05.2"
Unmarked Point 18	37°12'51.7"	76°40'21.8"
Unmarked Point 19	37°12'47.4"	76°39'40.4"
Unmarked Point 20	37°12'29.7"	76°39'12.1"
Unmarked Point 21	37°11'59.1"	76°38'33.2"
Unmarked Point 22	37°11'31.1"	76°38'05.2"
Unmarked Point 23	37°10'45.8"	76°37'50.0"
Unmarked Point 24	37°09'56.1"	76°37'57.1"
Unmarked Point 25	37°09'57.4"	76°37'29.4"
No limit line		
Unmarked Point 26	37°09'51.5"	76°37'28.9"
"J30"	37°09'50.1"	76°37'58.0"
Deep Water Shoals Light	37°08'55.4"	76°38'13.7"
"J22"	37°07'11.3"	76°38'14.1"
Unmarked Point 29	37°03'21.8"	76°35'30.5"
N "12"	37°03'12.0"	76°34'45.0"
(Fl. R) "10"	37°03'15.0"	76°33'35.5"
N "8"	37°01'44.0"	76°31'12.9"
Bell (Fl. R) "6"	37°01'13.5"	76°30'17.5"
Unmarked Point 30	37°00'14.0"	76°28'03.0"
Unmarked Point 31	36°59'34.5"	76°26'54.5"

(iii) *James River, fishing area northeast of Naseway Shoal.*

	Latitude	Longitude
"H14"	36°59'00.5"	76°27'24.1"
Unmarked Point 32	36°59'36.3"	76°28'52.0"
"J1"	37°00'31.5"	76°30'03.1"
Unmarked Point 33	37°00'07.0"	76°28'14.4"
Thence to "H14".		

(iv) *James River, White Shoal fishing area.*

	Latitude	Longitude
"J2"	37°00'46.0"	76°29'54.5"
"J4"	37°00'46.7"	76°30'40.7"
"J6"	37°01'26.0"	76°32'06.3"
"J8"	37°02'05.3"	76°33'31.9"
"J10"	37°02'45.9"	76°35'00.2"
"J25"	37°03'00.2"	76°34'59.9"
"J23"	37°03'02.0"	76°34'18.0"
"J11"	37°02'51.0"	76°33'29.5"
"J9"	37°01'33.0"	76°31'23.0"
Thence to "J2".		

(v) *James River, Point of Shoals fishing area.*

	Latitude	Longitude
"J12"	37°02'56.8"	76°35'33.4"
"J14"	37°03'03.9"	76°36'56.9"
"J16"	37°03'03.0"	76°38'30.0"
"J18"	37°03'13.5"	76°39'01.0"
"J20"	37°03'59.0"	76°39'21.6"
Unmarked Point 33A	37°05'23.0"	76°38'33.0"
Unmarked Point 33B	37°06'40.2"	76°38'27.8"
Unmarked Point 34	37°07'02.5"	76°38'17.9"
"J27"	37°03'11.4"	76°35'33.0"
Thence to "J12".		

(vi) *James River, fishing area northeast of Hog Island.*

	Latitude	Longitude
"J24"	37°09'48.0"	76°38'43.3"
"J26"	37°11'22.6"	76°39'36.0"
"J28"	37°12'25.8"	76°41'15.8"
"J39"	37°12'44.5"	76°40'19.8"
Unmarked Point 35	37°12'40.7"	76°39'43.9"
"J37"	37°12'24.5"	76°39'17.8"
"J35"	37°11'54.4"	76°38'39.6"
Unmarked Point 36	37°11'27.9"	76°38'13.1"
"J33"	37°10'45.3"	76°37'58.8"
"J31"	37°09'47.4"	76°38'07.1"
Thence to "J24".		

(vii) *James River, approach channel to Chickahominy River.*

	Latitude	Longitude
"J43"	37°13'21.9"	76°48'20.9"
"J45"		
"J47"	37°14'07.0"	76°50'21.4"
"J49"	37°14'03.3"	76°51'41.5"
"J51"	37°14'10.7"	76°52'28.0"
No limit line		
"J40"	37°14'15.0"	76°52'17.0"
"J38"	37°14'09.3"	76°51'41.0"
"J36"	37°14'13.0"	76°50'20.0"
"J34"		
"J32"	37°13'25.0"	76°48'11.7"

(viii) *James River, area in vicinity of Jordan Point, fishing prohibited.*

	Latitude	Longitude
Unmarked Point 37	37°18'15.7"	77°12'19.3"
Unmarked Point 38	37°18'18.0"	77°12'17.0"
Unmarked Point 39	37°18'56.8"	77°13'18.1"
Following line of 25-foot depth		
Unmarked Point 40	37°18'19.5"	77°14'54.2"
Unmarked Point 41	37°17'47.2"	77°14'46.8"

(ix) *Hampton Roads, Newport News to Hampton Creek.*

	Latitude	Longitude
Unmarked Point 42	36°58'08.5"	76°24'29.3"
"H2"	36°57'36.2"	76°24'34.0"
"H4"	36°57'51.0"	76°22'31.0"
"H13"		
C"1"	37°00'11.5"	76°20'31.4"
Unmarked Point 43	37°00'47.4"	76°20'31.0"

(x) *Hampton Roads, Hampton Bar fishing area.*

	Latitude	Longitude
"H6"	36°58'07.6"	76°22'02.5"
"H8"		
"H10"	37°00'11.3"	76°20'16.6"
Unmarked Point 44	37°00'02.2"	76°19'24.4"
N "14"	36°59'45.3"	76°19'25.4"
N "16"	36°59'16.1"	76°20'21.6"
N "18"	36°58'46.2"	76°21'06.2"
Thence to "H6".		

(3) *West side of Chesapeake Bay north from Old Point Comfort to York River, including Back River.*

	Latitude	Longitude
Unmarked Point 45	37°00'30.0"	76°18'05.0"
Unmarked Point 46	37°00'38.0"	76°17'42.0"
Unmarked Point 47	37°01'00.0"	76°17'15.0"
"B1"	37°01'00.0"	76°16'19.5"
"B3"		
"B5"		
"B7"		
Bell (Fl. W) "1"	37°05'33.9"	76°14'57.0"
"B9"	37°05'45.6"	76°15'37.0"
(Fl. W) "7"	37°06'21.9"	76°16'17.1"
(Fl. G) "9"	37°06'30.2"	76°16'37.8"
(Fl. W) "11"	37°06'35.8"	76°17'26.8"
Unmarked Point 48	37°06'32.7"	76°17'34.2"
Unmarked Point 49	37°06'21.8"	76°17'16.0"
No limit line		
Unmarked Point 50	37°06'22.8"	76°17'43.8"
(Fl. W) "13"	37°06'29.3"	76°17'42.4"
Unmarked Point 51	37°06'19.1"	76°18'12.6"
Unmarked Point 52	37°06'16.1"	76°18'24.8"
Unmarked Point 53	37°06'13.4"	76°18'46.7"
Unmarked Point 54	37°06'10.6"	76°19'05.8"
Unmarked Point 55	37°06'09.6"	76°19'41.0"
Unmarked Point 56	37°05'21.3"	76°20'01.8"
(Fl. G) "29"	37°04'35.6"	76°20'24.7"
Unmarked Point 57	37°04'06.9"	76°20'57.9"
No limit line		
Unmarked Point 58	37°05'11.0"	76°20'21.9"
Unmarked Point 59	37°05'17.6"	76°20'11.0"
Unmarked Point 60	37°05'23.1"	76°20'07.5"
Unmarked Point 61	37°05'58.3"	76°19'52.5"
Unmarked Point 62	37°05'54.2"	76°20'12.1"
Unmarked Point 63	37°05'38.1"	76°20'35.0"
No limit line		
Unmarked Point 64	37°05'41.8"	76°20'39.1"
Unmarked Point 65	37°06'09.2"	76°20'00.1"
Unmarked Point 66	37°06'14.7"	76°19'41.3"
Unmarked Point 67	37°06'18 "	76°18'49.2"
Unmarked Point 68	37°06'27. /	76°19'08.9"
No limit line		
Unmarked Point 69	37°06'37.0"	76°19'00.0"
Unmarked Point 70	37°06'20.4"	76°18'30.4"
Unmarked Point 71	37°06'23.8"	76°18'14.5"
(Fl. R) "10"	37°06'40.4"	76°17'27.9"
Unmarked Point 72	37°06'35.5"	76°16'34.5"
Unmarked Point 73	37°06'27.2"	76°16'13.8"
Unmarked Point 74	37°06'05.6"	76°15'46.8"
"B13"	37°05'58.2"	76°14'53.6"
"B15"		
"B17"		
"B19"		
"B21"		
"Y3"	37°12'20.6"	76°17'26.5"
"Y5"	37°13'27.8"	76°19'21.9"
"Q1"	37°12'33.8"	76°20'17.7"
"Q3"	37°11'41.1"	76°21'12.2"
"Q5"	37°10'48.3"	76°22'06.7"
Poquoson River Entrance Light 11	37°09'53.0"	76°23'03.0"
Unmarked Point 74A	37°09'44.5"	76°22'38.0"
No limit line		
Bennett Creek Light 2	37°09'30.8"	76°22'37.0"
Poquoson River Daybeacon 13	37°09'58.0"	76°23'28.0"
Poquoson River Light 15	37°10'06.5"	76°24'08.0"
No limit line		
Poquoson River Light 14	37°10'07.5"	76°23'35.0"
Poquoson River Entrance Lighted Buoy 10	37°10'02.0"	76°23'06.5"
Poquoson River Entrance Buoy 8	37°10'53.0"	76°22'13.8"
Poquoson River Entrance Lighted Buoy 6	37°11'45.8"	76°21'19.3"
Poquoson River Entrance Buoy 4	37°12'38.5"	76°20'24.8"
Poquoson River Entrance Lighted Buoy 2	37°13'31.3"	76°19'30.3"
"Y9"	37°13'56.5"	76°21'10.4"

(4) *Chesapeake Bay, fishing area southeast of mouth of Back River.*

	Latitude	Longitude
"C19"	37°00'38.0"	76°16'11.0"
"B2"		
"B4"		
"B6"		
"B8"	37°05'29.8"	76°14'43.0"
"B11"		
"C27"	37°04'40.0"	76°11'53.3"
"C25"		
"C23"	37°02'21.8"	76°12'24.4"
"C21"		
Thimble Shoal Light	37°00'51.7"	76°14'25.1"
Thence to "C19".		

(5) *Chesapeake Bay, fishing area east of mouth of Back River.*

	Latitude	Longitude
"B12"	37°05'53.0"	76°14'36.0"
"B14"		
"B16"		
"B18"		
"B20"		
"Y1"	37°12'06.5"	76°17'05.4"
"C35"	37°08'52.5"	76°12'12.5"
"C33"	37°07'48.8"	76°12'05.7"
"C31"		
"C29"	37°05'03.7"	76°11'48.0"
"B10"		
Thence to "B12".		

(6) *York River, above King Creek.*

	Latitude	Longitude
North end of L-shaped pier, King Creek	37°17'41.1"	76°35'18.3"
C"35"	37°19'22.9"	76°36'03.6"
C"37"	37°21'03.5"	76°37'20.2"
C"41"	37°22'20.3"	76°38'42.2"
C"43"	37°23'43.5"	76°40'05.1"
"Y11"	37°24'48.8"	76°41'16.3"
"Y13"	37°25'51.0"	76°42'31.2"
"Y15"	37°26'53.0"	76°43'46.7"
York River Channel Buoy 47	37°28'48.3"	76°44'57.1"
York River Light 51	37°29'44.6"	76°46'55.1"
"Y17"	37°30'06.9"	76°47'15.2"
C"59"	37°30'52.5"	76°47'41.0"
Unmarked Point 75	37°32'01.7"	76°48'29.6"
No limit line		
Unmarked Point 76	37°31'40.2"	76°47'57.5"
"Y18"	37°30'31.7"	76°47'17.9"
Unmarked Point 77	37°31'40.8"	76°47'28.4"
No limit line		
Unmarked Point 78	37°31'43.9"	76°47'19.3"
N"54"	37°30'13.5"	76°47'05.1"
N"50"	37°29'50.5"	76°46'39.3"
Bells Rock Light	37°20'00.0"	76°45'00.0"
"Y16"	37°26'53.1"	76°43'34.1"
"Y14"	37°25'56.7"	76°42'17.6"
N"44"	37°25'11.4"	76°41'25.0"
Purtan Bay Light "42"	37°23'25.4"	76°39'28.0"
"Y12"	37°22'03.2"	76°38'03.0"
"Y10"	37°20'14.0"	76°36'13.0"
Pages Rock Light	37°18'39.2"	76°35'12.9"

(7) *Chesapeake Bay, fishing area southeast of mouth of York River.*

	Latitude	Longitude
"C37"	37°09'42.3"	76°12'17.9"
"Y2"	37°12'56.4"	76°17'10.8"
"M3"	37°14'18.9"	76°15'29.5"
"M1"		
"C39"	37°11'28.0"	76°12'29.3"
Thence to "C37".		

(8) *Chesapeake Bay, fishing area east of mouth of York River.*

	Latitude	Longitude
"C41"	37°12'09.0"	76°12'33.7"
"M2"		
"M4"	37°14'35.9"	76°15'08.7"
"M23"		
"M25"		
"M27"		
"C47"	37°17'30.3"	76°11'34.4"
"C45"		
"C43"		
Thence to "C41".		

(9) *West side of Chesapeake Bay north from York River to Wolf Trap Light, including Mobjack Bay.*

	Latitude	Longitude
Unmarked Point 79	37°15'07.0"	76°22'42.0"
"Y8"	37°14'35.4"	76°20'56.6"
"Y6"	37°14'03.9"	76°19'11.2"
"Y4"	37°13'04.0"	76°17'22.3"
"M5"	37°14'26.8"	76°15'39.6"
"M7"		
"M9"		
"M11"		
"M13"	37 °17'49.9"	76°19'12.6"
"M15"		
"M17"	37°20'22.7"	76°22'14.8"
"S1"	37°19'54.2"	76°22'53.0"
No limit line		
"S2"	37°19'55.9"	76°23'17.9"
"M19"	37°20'29.4"	76°22'33.0"
"M21"	37°21'22.5"	76°24'56.4"
No limit line		
"M20"	37°22'27.0"	76°23'38.4"
"M18"	37°21'21.0"	76°22'00.0"
East River Entrance Light 1	37°21'16.9"	76°21'08.5"
East River Light 3	37°22'13.2"	76°20'41.1"
No limit line		
Unmarked Point 80	37°22'05.8"	76°20'21.4"
Unmarked Point 80	37°21'32.5"	76°20'21.4"
East River Daybeacon 2	37°19'56.2"	76°20'45.0"
"M16"		
"M14"	37°18'05.3"	76°18'49.9"
"M12"		
"M10"		
"M8"		
"M6"	37°14'45.0"	76°15'18.3"
"M22"		
"M24"		
"M26"		
"C47A"	37°17'50.2"	76°11'30.7"
"C49"		
"C51"		
"C51A"		
"C51B"	37°23'29.6"	76°10'27.9"

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(10) *West side of Chesapeake Bay north from Wolf Trap Light to Maryland-Virginia State border.*

	Latitude	Longitude
"C51B"	37°23'29.6"	76°10'27.9"
"C53"		
"C55"		
"C57"		
"C59"		
"C61"	37°32'15.8"	76°11'30.1"
"R1"	37°33'34.8"	76°13'25.0"
Piankatank River Lighted Buoy 1	37°33'34.8"	76°13'25.0"
"P1"		
C "3"	37°31'46.9"	76°18'20.0"
No limit line		
Unmarked Point 81	37°32'05.1"	76°18'32.0"
"P4"		
Piankatank River Lighted Buoy 4		
"R3"	37°33'54.9"	76°13'31.5"
"R5"		
Rappahannock River Daybeacon 7	37°35'10.0"	76°19'45.0"
No limit line		
N "2"	37°36'06.8"	76°21'20.6"
Rappahannock River Entrance Buoy 6		
Unmarked Point 83	37°34'49.6"	76°14'51.1"
Unmarked Point 84	37°37'19.0"	76°11'37.5"
"C67"		
"C69"	37°40'46.7"	76°11'29.9"
"F1"		
Unmarked Point 85	37°40'23.3"	76°15'56.6"
Unmarked Point 86	37°39'19.7"	76°18'00.6"
Following line of 18-foot depth		
Unmarked Point 87	37°38'45.4"	76°18'59.1"
No limit line		
Unmarked Point 88	37°38'51.0"	76°19'04.8"
Following line of 18-foot depth		
Unmarked Point 89	37°39'13.9"	76°19'04.5"
No limit line		
Unmarked Point 90	37°39'19.8"	76°19'01.5"
Following line of 18-foot depth		
Unmarked Point 91	37°40'07.2"	76°18'16.0"
No limit line		
Unmarked Point 92	37°40'18.0"	76°18'25.0"
Following line of 18-foot depth		
Unmarked Point 93	37°40'51.1"	76°16'22.1"
Dividing Creek Light 3	37°42'53.0"	76°16'57.0"
No limit line		
Unmarked Point 94	37°42'45.4"	76°16'37.2"
Unmarked Point 95	37°40'52.4"	76°16'02.6"
"F2"		
"C71"	37°41'16.5"	76°11'28.7"
"C73"		
"C75"	37°46'58.2"	76°12'13.0"
C"3"	37°47'45.8"	76°15'27.4"
No limit line		
Great Wicomico River Light	37°48'15.0"	76°16'04.6"
"C77"	37°48'24.7"	76°12'03.0"
"C79"	37°50'51.3"	76°11'06.2"
Smith Point Light	37°52'47.1"	76°11'02.8"
C"1" on Maryland- Virginia State border	37°54'09.7"	76°11'49.3"

(11) *Chesapeake Bay, fishing area east of mouth of Rappahannock River.*

	Latitude	Longitude
Rappahannock River Entrance Buoy 4	37°34'45.7"	76°14'30.1"
"R7"		
"C65"	37°36'58.3"	76°11'38.7"
Rappahannock River Entrance Buoy 2	37°34'12.8"	76°11'44.9"
Thence to Rappahannock River Entrance Buoy 4.		

(12) *Rappahannock River in vicinity of Tappahannock.*

	Latitude	Longitude
Unmarked Point 96	37°49'28.7"	76°43'56.5"
"C19"	37°51'17.9"	76°45'26.6"
"R9"	37°51'56.8"	76°46'05.3"
Unmarked Point 97	37°53'27.5"	76°46'51.6"
"C23"	37°53'40.3"	76°47'05.1"
(Fl. G) "29"	37°55'03.3"	76°49'20.6"
Unmarked Point 98	37°55'50.3"	76°51'08.9"
Unmarked Point 99	37°56'16.3"	76°51'35.0"
Unmarked Point 100	37°57'46.9"	76°51'42.0"
Unmarked Point 101	37°58'29.1"	76°52'01.5"
No limit line		
Unmarked Point 102	37°58'30.6"	76°51'54.0"
Unmarked Point 103	37°57'46.1"	76°51'33.6"
Unmarked Point 104	37°56'19.3"	76°51'26.9"
"R12"	37°55'52.8"	76°50'57.2"
"R10"	37°55'09.6"	76°49'18.0"
"R8"	37°53'37.9"	76°46'45.4"
Unmarked Point 105	37°51'59.7"	76°55'58.4"
"R6"	37°51'24.3"	76°45'22.8"
Unmarked Point 106	37°49'31.6"	76°43'48.6"

(13) *Chesapeake Bay, fishing area in vicinity of Tangier Island.*

	Latitude	Longitude
Unmarked Point 107 on Maryland-Virginia State border	37°56'17.1"	76°05'44.8"
Tangier Island Shoal Point Buoy 2	37°47'03.6"	76°05'42.0"
"C34"	37°44'24.0"	76°02'42.0"
Tangier Sound Light	37°47'16.6"	75°58'26.7"
Prohibited Area		
A circle 1,000 yards in radius with its center at	37°47'54.0"	76°03'48.0"

(14) *East side of Chesapeake Bay south from Onancock Creek to Cape Charles.*

	Latitude	Longitude
"C32"	37°43'24.0"	75°51'42.0"
"C30"		
"R2A"	37°43'40.8"	75°54'57.0"

	Latitude	Longitude
"C28"	37°38'23.2"	75°57'12.1"
Unmarked Point 109	37°38'23.4"	75°56'30.0"
No limit line		
Unmarked Point 110	37°37'36.0"	75°56'00.0"
"C26"	37°37'23.9"	75°57'37.3"
"C24"	37°32'55.2"	75°59'31.2"
Unmarked Point 111	27°32'55.2"	75°58'05.4"
No limit line		
Unmarked Point 112	37°32'10.2"	75°58'24.0"
"C22"	37°31'39.6"	75°59'54.6"
"C20"	37°28'30.7"	76°00'40.6"
Unmarked Point 113	37°28'15.0"	75°59'06.0"
No limit line		
Unmarked Point 114	37°27'40.2"	75°59'19.8"
"C18"	37°27'26.4"	76°00'56.3"
"C16"	37°24'11.3"	76°01'43.7"
Unmarked Point 115	37°23'58.8"	76°00'05.4"
No limit line		
Unmarked Point 116	37°23'07.2"	76°00'21.6"
"C14"	37°23'05.5"	76°01'59.7"
"C12"		
"C10"	37°15'04.2"	76°03'56.4"
"C8"	37°14'02.4"	76°03'20.4"
Unmarked Point 117	37°14'27.1"	76°02'35.7"
No limit line		
Unmarked Point 118	37°14'07.4"	76°02'06.0"
"C6"	37°13'35.1"	76°03'04.6"

[44 FR 65980, Nov. 16, 1979]

§ 206.60 Winyah Bay, South Carolina; fishing.

No weir, trap, pound, or sturgeon sets shall be located or built in such a manner as to obstruct or interfere with navigation or constructed or placed closer than 100′ from the navigation channel.

[44 FR 65985, Nov. 16, 1979]

§ 206.93 Puget Sound Area, Washington; gill nets.

(a) *Restricted fishing area.* (1) The regulations in this paragraph shall govern fishing with gill nets within the waters of Puget Sound, Hood Canal, Possession Sound, Strait of Juan de Fuca, San Juan Archipelago, Georgia Strait, Rosario Strait, and adjacent waters north of latitude 47°39′42″ (passing through West Point Light), and east of longitude 123°24′30″ (passing through Ediz Point Light); exclusive of the waters lying within the Tulalip, Swinomish and Lummi Indian Reservations.

(2) A tug with tow, whose intended course will take it through waters occupied by gill net gear, shall sound one long blast, followed by one short blast, of a whistle or horn, and during darkness or fog shall, in addition, indicate its intended course by directing a searchlight beam on such course. Gill net fishermen operating within the indicated course of the tug shall draw in their gear or otherwise maneuver to permit passage of the tug and its tow without hindrance or unreasonable delay.

(3) A tug without tow or any other vessel, if unable to determine the lay of the nets and doubt exists aboard the tug or vessel as to the best course to take, may request assistance of the nearest gill net boat which shall, without delay, drop its net and pilot the tug or vessel through. If assistance of a pilot boat is not obtainable or if nets are so concentrated as to make it impracticable to lay a course through the nets, the tug or vessel shall proceed as indicated in paragraph (a)(2) of this section for a tug with tow, and nets shall be lifted or maneuvered out of the way to permit passage of the tug or vessel without hindrance or unreasonable delay.

(4) A boat with at least one man in it capable of controlling the net shall be in constant attendance upon each net while it is laid out, except when providing pilot service as provided in paragraph (a)(3) of this section.

(b) Prohibited fishing area in Possession Sound between Mukilteo and Columbia Beach. Fishing with gill nets is prohibited within 440 yards on each side of a straight line connecting the ferry landings at Mukilteo and Columbia Beach.

[44 FR 65985, Nov. 16, 1979]

PART 207—NAVIGATION REGULATIONS

Sec.

207.4 Gulf of Maine off Pemaquid Point, Maine; naval sonobuoy test area.
207.6 Piscataqua River at Portsmouth Naval Shipyard, Kittery, Maine; restricted areas.
207.9 Mystic River, Mass.; dam of Commonwealth of Massachusetts, Metropolitan District Commission.
207.10 Charles River, Mass.; dam of Charles River Basin Commission.
207.20 Cape Cod Canal, Massachusetts; use, administration, and navigation.

Sec.
207.37 Jamaica Bay, Long Island, New York; seaplane restricted area.
207.50 Hudson River Lock at Troy, N.Y.; navigation.
207.60 Federal Dam, Hudson River. Troy, N.Y.; pool level.
207.90 Delaware River, Pa.; use of Government landing pier at Marcus Hook.
207.100 Inland waterway from Delaware River to Chesapeake Bay, Del. and Md. (Chesapeake and Delaware Canal); use, administration, and navigation.
207.105 Delaware Bay off Cape Henlopen, Del.; naval restricted area.
207.116 Severn River at Annapolis, Md.; experimental test area, U.S. Navy Marine Engineering Laboratory.
207.117 Severn River, at U.S. Naval Academy Santee Basin, Annapolis, Md.; naval restricted area.
207.125 Patuxent River, Md.; restricted areas, U.S. Naval Air Test Center, Patuxent River, Md.
207.126 Gunston Cove, at Whitestone Point, Va.; U.S. Army restricted area.
207.128 York River, Va.; naval prohibited and restricted areas.
207.129 York River adjacent to Cheatham Annex Depot, Naval Supply Center, Williamsburg, Virginia; restricted area.
207.152—207.152a [Reserved]
207.152b James River between the entrance to Skiffes Creek and Mulberry Point, Va.; army training and small craft testing area.
207.153 Elizabeth River, Southern Branch, Va., naval restricted areas.
207.155 Hampton Roads and Willoughby Bay off Norfolk Naval Base; navy restricted areas.
207.157 Chesapeake Bay, Lynnhaven Roads; navy amphibious training area.
207.158 Chesapeake Bay entrance; naval restricted area.
207.160 All waterways tributary to the Atlantic Ocean south of Chesapeake Bay and all waterways tributary to the Gulf of Mexico east and south of St. Marks, Fla.; use, administration, and navigation.
207.161 Cape Fear River, Navigation Locks, between 29 and 94 river miles north of Wilmington, North Carolina; use, administration and navigation.
207.164 Neuse River and tributaries at Marine Corps Air Station, Cherry Point, N.C.; restricted area.
207.164a Cape Fear River and tributaries at Sunny Point Army Terminal, Brunswick County, North Carolina; restricted area.
207.164b Cooper River and tributaries at Charleston, S.C.; restricted areas.
207.164c Cooper River and Charleston Harbor, South Carolina; restricted areas.
Sec.
207.165 St. Johns River, Fla., Ribault Bay; prohibited area.
207.167 U.S. Navy Fuel Depot Pier, St. Johns River, Jacksonville, Florida; restricted area.
207.169 Oklawaha River, navigation lock and dam at Moss Bluff, Fla.; use, administration and navigation.
207.170 Federal Dam, Oklawaha River, Moss Bluff, Fla.; pool level.
207.170a Eugene J. Burrell Navigation Lock in Haines Creek near Lisbon, Florida; use, administration and navigation.
207.170b Apopka-Beauclair Navigation Lock in Apopka-Beauclair Canal in Lake County, Florida; use, administration and navigation.
207.170c Kissimmee River, navigation locks between Lake Tohopekaliga and Lake Okeechobee, Fla.; use, administration and navigation.
207.170d Taylor Creek, navigation lock (S-193) across the entrance to Taylor Creek at Lake Okeechobee, Okeechobee, Fla.; use, administration and navigation.
207.171 Canaveral Harbor adjacent to the Navy pier at Port Canaveral, Fla.; restricted area.
207.171a Banana River at Cape Canaveral Missile Test Annex, Fla.; prohibited area.
207.171b Banana River at Cape Canaveral Air Force Station, Fla., restricted area.
207.171c [Reserved]
207.171d Banana River at Patrick Air Force Base, Fla.; prohibited area.
207.171e Banana River near Orsino, Fla.; restricted area.
207.171f Atlantic Ocean near Port Everglades, Fla.; naval restricted area.
207.173 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted area.
207.175a Carlson's Landing Dam navigation lock, Withlacoochee River, Fla.; use, administration and navigation.
207.175b Weekley Bayou, an arm of Boggy Bayou, Fla., at Eglin Air Force Base; restricted area.
207.175c Ben's Lake, a tributary of Choctawhatchee Bay, Fla., at Eglin Air Force Base; restricted area.
207.175d Alligator Bayou, a tributary of St. Andrew Bay, Florida; restricted area.
207.175e Gulf of Mexico and St. Andrew Sound, south of East Bay, Florida, Tyndall Drone Launch Corridor, Tyndall Air Force Base, Florida; restricted area.
207.176 Pensacola Bay, Fla.; seaplane restricted area.

Sec.
207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration, and navigation.
207.184 Sabine River at Orange, Texas; restricted area in vicinity of the Naval and Marine Corps Reserve Center.
207.185 Taylors Bayou, Tex., Beaumont Navigation District Lock; use, administration and navigation.
207.187 Gulf Intracoastal Waterway, Tex.; special floodgate, lock and navigation regulations.
207.188 Corpus Christi Bay, Tex.; seaplane restricted area, U.S. Naval Air Station, Corpus Christi.
207.200 Mississippi River below mouth of Ohio River, including South and Southwest Passes; use, administration, and navigation.
207.249 Ouachita and Black Rivers, Arkansas and Louisiana, mile 0.0 to mile 237.0 (Arkansas-Louisiana line) above the mouth of the Black River; use, administration, and navigation.
207.250 Ouachita River, Mile 237.0 (Ark. and La. line) above the mouth of the Black River to the head of navigation; use, administration, and navigation.
207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth at Kleinston Landing to Fisher Street; navigation.
207.270 Tallahatchie River, Miss., between Batesville and the mouth; logging.
207.275 White River, Arkansas Post Canal, Arkansas River and Verdigris River between Mississippi River, Ark., and Catoosa, Okla.; use, administration, and navigation.
207.280 White River, Ark.; use, administration, and navigation of locks in upper White River.
207.290 Current River above Van Buren, Mo.; logging.
207.300 Ohio River, Mississippi River above Cairo, Ill., and their tributaries; use, administration, and navigation.
207.305 Holston River at Holston Ordnance Works, Kingsport, Tennessee; restricted area.
207.306 Missouri River; administration and navigation.
207.310 Mississippi River at Keokuk, Iowa; operation of power dam by Mississippi River Power Co.
207.320 Mississippi River, Twin City Locks and Dam, St. Paul and Minneapolis, Minn.; pool level.
207.330 Mississippi River between Winnibigoshish and Pokegama dams, Leech River between outlet of Leech Lake and Mississippi River, and Pokegama reservoir; logging.

Sec.
207.340 Reservoirs at headwaters of the Mississippi River; use and administration.
207.350 St. Croix River, Wis. and Minn.
207.360 Rainy River, Minn.; logging regulations for portions of river within jurisdiction of the United States.
207.370 Big Fork River, Minn.; logging.
207.380 Red Lake River, Minn.; logging regulations for portion of river above Thief River Falls.
207.390 The Great Lakes; waterborne commerce statistics.
207.400 Duluth-Superior Harbor, Minn., and Wis.; use, administration, and navigation, and bridge regulations.
207.410 Keweenaw Waterway, Mich.; use, administration, and navigation.
207.420 Chicago River, Ill.; Sanitary District controlling works, and the use, administration, and navigation of the lock at the mouth of river, Chicago Harbor.
207.425 Calumet River, Illinois: Thomas J. O'Brien Lock and Controlling Works and the use, administration and navigation of the lock.
207.440 St. Marys Falls Canal and Locks, Mich.; use, administration, and navigation.
207.441 St. Marys Falls Canal and Locks, Mich.; security.
207.460 Fox River, Wis.
207.470 Sturgeon Bay and Lake Michigan Ship Canal, Wis., use and navigation.
207.475 Lake Michigan; naval restricted area, United States Naval Training Center, Great Lakes, Ill.
207.476 The Inland Route—lock in Crooked River, Alanson, Mich., use, administration, and navigation.
207.480 Lake Huron, Mich.; Harbor of refuge, Harbor Beach, use and navigation.
207.490 Cheboygan River, Mich.
207.560 Sandusky Harbor, Ohio; use, administration, and navigation.
207.565 Vermilion Harbor, Ohio; use, administration, and navigation.
207.570 Harbors of Huron, Lorain, Cleveland, Fairport, Ashtabula, Conneaut, Ohio; use, administration, and navigation.
207.580 Buffalo Harbor, N.Y.; use, administration, and navigation.
207.590 Black Rock Canal and Lock at Buffalo, N.Y.; use, administration and navigation.
207.600 Rochester (Charlotte) Harbor, N.Y.; use, administration, and navigation.
207.610 St. Lawrence River, Cape Vincent Harbor, N.Y.; use, administration, and navigation of the harbor and United States breakwater.

Sec.
207.611 St. Lawrence River from Tibbets Point to Raquette River, excluding the section between Eisenhower Lock and Snell Lock, N.Y.; use, administration and navigation in U.S. waters. [Reserved]
207.612 San Diego Harbor, Calif.; restricted areas.
207.612a San Diego Harbor, Calif.; naval restricted area adjacent to Point Loma.
207.612b Pacific Ocean off Point Loma, Calif.; naval restricted area.
207.613 Pacific Ocean; U.S. Navy restricted area in vicinity of Scripps Institution of Oceanography Pier, La Jolla, Calif.
207.613a Pacific Ocean, U.S. Marine Corps Base, Camp Pendleton, California; restricted area.
207.613b Pacific Ocean, Camp Pendleton Boat Basin, U.S. Marine Corps Base, Camp Pendleton, Calif.; restricted area.
207.614 Pacific Ocean off the east coast of San Clemente Island, Calif.; naval restricted area.
207.615 Pacific Ocean, around San Nicolas Island, Calif., naval restricted area.
207.617 Long Beach Harbor, Calif.; naval restricted area.
207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, Calif.
207.655 Rogue River, Oregon; logging.
207.660 Coquille River, Oreg.; logging on North Fork between its mouth and Gravel Ford, at the junction of the North and East Forks.
207.663 South Fork of Coos River, Oreg.; logging in tidal section.
207.680 Willamette River, Oreg.; use, administration, and navigation of canal and locks at Willamette Falls, Oreg.
207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oregon and Washington.
207.720 Willapa Bay and tributaries, Wash.; logging.
207.730 Grays Harbor and tributaries, Wash.; logging.
207.750 Puget Sound Area, Wash.
207.770 Snoqualmie and Snohomish Rivers, Wash.; logging.
207.780 Sammamish River, Wash.; logging.
207.801 Lutak Inlet, Alaska; restricted areas.
207.802 Kuluk Bay, Adak, Alaska; naval restricted area.
207.804 Bering Strait, Alaska; naval restricted area off Cape Prince of Wales.
207.805 [Reserved]
207.806 Pacific Ocean, at Barbers Point, Island of Oahu, Hawaii; restricted area.
207.807 Pacific Ocean, at Makapuu Point, Waimanalo, Island of Oahu, Hawaii, Makai Undersea Test Range.
207.808 Apra Inner Harbor, Island of Guam, restricted area.
207.815 Vieques Passage and Atlantic Ocean, off east coast of Puerto Rico and coast of Vieques Island; naval restricted areas.
207.817 Caribbean Sea, at St. Croix, V.I.; restricted areas.

AUTHORITY: Secs. 4, 7, 28 Stat. 362, 40 Stat. 266; 33 U.S.C. 1, unless otherwise noted.

§ 207.4 Gulf of Maine off Pemaquid Point, Maine; naval sonobuoy test area.

(a) *The area.* The test area or "Foul Area" encompasses a circular area one nautical mile in radius, the center of which is located 7.9 nautical miles, bearing 187° magnetic from Pemaquid Light.

(b) *The regulations.* (1) Sonobuoy drops will be made only in the designated area and when visibility is at least three miles.

(2) Sonobuoy drop tests will normally be conducted at intermittent periods on a 5-day week basis, Monday through Friday. However, on occasion tests may be conducted intermittently on a seven-day week basis.

(3) Prior to and during the period when sonobuoys are being dropped, an escort vessel from the U.S. Naval Air Station will be in the vicinity to insure that no vessels are in the testing area. Vessels may be requested to veer off when sonobuoys are about to be dropped; however, drops will be made only when the area is actually clear of vessels as ascertained by the project aircraft and the surface vessel.

(4) The sonobuoys drops will be made in connection with the production and experimentation of sonobuoys.

(5) No live ammunition or explosives will be involved.

(6) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Air Station, Brunswick, Maine, or such agencies as he may designate.

[27 FR 4280, May 4, 1962]

§ 207.6 Piscataqua River at Portsmouth Naval Shipyard, Kittery, Maine, restricted areas.

(a) *The areas.*

Area No. 1: The area bounded by a line at a point on the easterly side of Seavey Island at latitude 43°04'37"N, longitude 70°43'44"W, thence to latitude 43°04'36"N; longitude 70°43'40"N, thence to the pier on the westerly side of Clark Island at latitude 43°04'36.5"N, longitude 70°43'34"W; thence along the northerly side of Clark Island to a point on the easterly side at latitude 43°04'37"N, longitude 70°43'25"W, thence northeasterly to the easterly side of Jamaica Island at latitude 43°04'49"N, longitude 70°43'24"W, thence along the southerly and westerly sides of Jamaica Island and thence generally along the easterly side of Seavey Island to the point of beginning.

Area No. 2: The area bounded by a line beginning at a point on the southerly side of Seavey Island at Henderson Point at latitude 43°04'29" N, longitude 70°44'14" W; thence to latitude 43°04'29.5" N, longitude 70°44'17.4" W; thence to latitude 43°04'36.6" N, longitude 70°44'22.6" W; thence to latitude 43°04'44.8" N, longitude 70°44'33.2" W; thence to latitude 43°04'47.4" N, longitude 70°44'42.1" W; thence to latitude 43°04'48" N, longitude 70°44'52" W; thence to latitude 43°04'49" N, longitude 70°44'54" W; thence to latitude 43°04'51" N, longitude 70°44'55" W; thence to latitude 43°04'53" N, longitude 70°44'53" W; thence to latitude 43°04'57" N, longitude 70°44'47" W; thence to latitude 43°04'58" N, longitude 70°44'46" W; thence to latitude 43°05'02" N, longitude 70°44'36" W; thence to latitude 43°05'04" N, longitude 70°44'31" W; thence along the westerly side of Seavey Island to the beginning point.

(b) *The regulations.* All vessels and other craft, except those under the supervision of or contract to local military or naval authority, are prohibited from entering the restricted areas without permission from the Commander, Portsmouth Naval Shipyard or his authorized representative.

[46 FR 43045, Aug. 26, 1981, 46 FR 61116, Dec. 15, 1981]

§ 207.9 Mystic River, Mass.; dam of Commonwealth of Massachusetts, Metropolitan District Commission.

(a) *Definition and authority of superintendent.* The term superintendent as used in the regulations in this section shall mean himself and/or his personnel then on duty at the dam. The positioning and movements of all watercraft of every description while in the locks or within 100 yards of the locks or dam shall be subject to the direction of the superintendent whose orders must be obeyed. This order does not relieve the master of the responsibility for the safety of his vessel.

(b) *Description of locks.* There are three (3) locks to be used for the passage of vessels; one large lock 325 feet long, 45 feet wide, shall be used for vessels with draft up to seventeen (17) feet; two small locks each 120 feet long and 22 feet wide shall be used for boats up to six (6) feet draft.

(c) *Maximum draft.* Vessels drawing within six (6) inches of depth over the sills shall not be permitted lockage except under special permission of the superintendent. Every vessel using the locks and drawing more than ten (10) feet shall be accurately and distinctly marked at bow and stern showing the exact draft of water at such portions of the vessel. Gages set into the walls or the locks, both upstream and downstream of each gate, indicate the depth in feet of water over the sill of the gate.

(d) *Vessels denied lockage.* The superintendent may deny passage through the locks to any craft with sharp, rough projecting corners, overhanging equipment or cargo, or any craft or two that is in sinking condition or in any way unseaworthy or insufficiently manned and equipped, or any craft failing to comply with the regulations in this section or with any orders given in pursuance thereof.

(e) *Protection of lock gates.* (1) In no case shall boats be permitted to enter or leave any of the locks until directed to do so by the superintendent. Boats shall not be permitted to enter or start to leave until the lock gates are at rest within the gate recesses. All persons, whether in charge of vessels or not, are prohibited from willfully or care-

lessly damaging the locks or any of the appurtenances or the grounds adjacent thereto, and from throwing or allowing any material of any kind to fall from the barge, scow or other vessel into the locks.

(2) No person shall permit or suffer any vessel, scow, raft, or float to come in contract with any gate or any of the locks of the Amelia Earhart Dam.

(f) *Damage to walls.* The sides of all craft passing through the locks must be free from projection of any kind which might injure the lock walls. All craft must be provided with suitable fenders. One or more men as the superintendent may direct shall be kept at the head of every tow until it has cleared the lock and guide walls, and shall protect the walls by use of the fenders.

(g) *Unnecessary delay at locks.* No person shall cause or permit any craft of which he is in charge to remain in the locks or their approaches for a longer period of time than is necessary for the passage of the locks unless he is especially permitted to do so by the superintendent, and if such craft is, in the opinion of such superintendent, in a position to obstruct navigation, it shall be removed at once as requested or directed by the superintendent.

(h) *Procedure at locks.* The locks shall be operated promptly for the passage of all craft upon signal, excepting only in such cases as are specifically provided for in the regulations in this section. All registered merchant vessels shall pass through the locks in the order directed by the superintendent. Other craft shall be allowed to pass through the locks at the discretion of the superintendent.

(i) *Navigation of the locks.* (1) All barges navigating the locks whether approaching or leaving the locks are required to be assisted by one or more tugs of sufficient power to insure full control at all times. All craft approaching the locks while any other vessel going in the opposite direction is in or about to enter shall be stopped where they will not obstruct the free passage of such other vessel.

(2) All vessels over 100 gross tons including those which are accompanied by towboats must attach not less than two good and sufficient lines, cables, or hawsers to the bollards or other fixtures provided for the purpose to check the speed of the vessel and to stop it as soon as it has gone far enough to permit the lock gate behind it to be closed. Each line, cable, or hawser shall be attended on board while passing into the lock by one or more of the vessel's crew. Where vessels are so long that in order to get them wholly within the locks it is necessary to go within 100 feet of the lock gate ahead, the speed of the vessel must be slow and the vessel must be fully under control at all times by the lines, cables or hawsers. All towboats and vessels less than 100 gross tons may enter the locks without having lines out subject to the discretion of the superintendent. The master or person in charge of a vessel shall arrange to have any line, cable, or hawser handed or thrown from the lock walls by the superintendent, or his assistants, made fast on the vessel as requested or directed, so that in cases of emergency such line, cable, or hawser may also be used to check the speed of and stop the vessel.

(3) Operators of vessels less than 200 gross tons may use the floating moorings in the large lock to fasten lines or hawsers, but they shall not be used to check the way on any vessel greater than 30 gross tons.

(4) Vessels less than 30 gross tons may fasten lines to the floating moorings in the large or small locks. All persons shall keep off the floating moorings at all times.

(5) No line shall be attached to anything on or a part of the dam except the fixtures provided for this purpose.

(6) Equipment of each craft shall include a sufficient bow line and stern line.

(j) *Mooring.* When a craft is in position in the lock, it shall be securely fastened in a manner satisfactory to the superintendent to prevent the craft moving about while the lock is being filled or emptied, and the lines, cables, or hawsers used for this purpose shall be attended as far as is necessary or required while the filling or empting is in progress.

(k) *Traffic statistics.* Upon each passage through the locks, the master or clerk of each craft shall furnish the

superintendent such statistical information as may be required.

(l) *Signals.* (1) All craft desiring lockage shall, on approaching the locks, signal by two long and two short blasts of a whistle or other sound device. Two long blasts from the lock in reply will indicate a delayed opening and direct the craft not to enter the lock.

(2) Lights are located at each end of each lock and will normally show red. No vessel shall come within 100 feet of the outside of any gate when the signal is red except when so directed by the superintendent.

(3) Fireboats and craft owned by the U.S. Government shall be given prompt and preferential lockage when they sound four long blasts.

(4) No vessel shall move into or out of any lock until the controlling signal is green. A green light in addition to audio loud speakers, operated by the superintendent or his assistants, will direct craft through the locks.

(5) It shall be the duty of every master or person in charge of any vessel to ascertain by personal observation that the lock gate is fully open before proceeding.

(m) *Operating machinery.* Lock employees only shall be permitted to operate the lock gates, signals or other appliances. No person shall deface or injure any part of the Amelia Earhart Dam, or any pier, wall or other structure or any mechanism connected therewith; nor shall any person, without the consent of the superintendent, make fast to the dam, guard, guide wall, pier, or any appurtenance thereof any vessel, scow, raft, or float.

(n) *Vessel to carry regulations.* A copy of the regulations in this section shall be kept at all times on board each vessel regularly engaged in navigating the locks. Copies may be obtained without charge from the superintendent; the Commonwealth of Massachusetts, M.D.C. Parks Division, Boston, Mass.; New England Division, Corps of Engineers, Division Engineer, Waltham, Mass.

[32 FR 8716, June 17, 1967]

§ 207.10 Charles River, Mass.; dam of Charles River Basin Commission.

(a) The movements of all vessels or boats in and near the lock shall be under the direction of the superintendent in charge of these structures and his assistants, whose orders and signals shall be obeyed.

(b) Every vessel using the lock and drawing more than 10 feet shall be accurately and distinctly marked at the bow and stern, showing the exact draft of water at such portions of the vessel.

(c) All steam vessels desiring to pass through the lock shall signal for the same by two long and two short blasts of the whistle.

(d) (1) All vessels passing through the lock shall have their outboard spars, if any, rigged in, and booms amidships, and secured. All standing and running rigging must be triced in to keep it from blowing out and fouling the drawbridge. Every vessel of 200 tons and under shall be provided with at least two, and every vessel of more than 200 tons shall be provided with at least four good and sufficient lines, cables, or hawsers. Anchors shall either be stowed or shall hang from hawse pipes, hauled up close, clear of the water if possible. Vessels with anchors under foot or hanging from catheads will not be permitted to enter the lock.

(2) All vessels must be sufficiently manned and must have a sufficient number of round and fore-and-aft fenders to protect the lock from injury. All heavy rope fenders must be securely lashed to prevent their falling into the lock and interfering with the gates.

(e) All vessels approaching the lock while any other vessel going in the opposite direction is in or about to enter it shall be stopped where they will not obstruct the free passage of such other vessel.

(f) It shall be the duty of every master or person in charge of any vessel upon approaching the lock from the upstream end to ascertain by personal observation whether or not the upper lock gate is open, and a vessel shall not be permitted to come within 100 feet of the upper lock gate until the gate has been wholly withdrawn into its recess.

(g) All towboats, whether towing or not, and other steam vessels of less than 100 tons gross may enter the lock

under their own power and without having lines out, but all other vessels, including those which are accompanied by towboats, must attach not less than two good and sufficient lines, cables, or hawsers to the bollards or other fixtures provided for the purpose to check the speed of the vessel and to stop it as soon as it has gone far enough to permit the lock gate behind it to be closed, and each line, cable, or hawser shall be attended on board while passing into the lock by one or more of the vessel's crew. Where vessels are so long that in order to get them wholly within the lock it is necessary to approach within 150 feet of the lock gate ahead, the speed of the vessel must be slow and fully under control by the lines, cables, or hawsers. Steam vessels of more than 100 tons gross, not including towboats, will not be permitted to turn their propellers on entering the lock after the bow of the vessel has entered, but will be drawn in by means of capstans on the lock walls or otherwise, and their speed must be checked and the vessel stopped by lines, cables, or hawsers as in other cases. All steam vessels may leave the lock under their own power. The master or person in charge of a vessel shall arrange to have any line, cable, or hawser handed or thrown from the lock walls by the superintendent or his assistants, made fast on the vessel as requested or directed, so that in cases of emergency such line, cable, or hawser may also be used to check the speed of and stop the vessel.

(h) When a vessel is in position in the lock it shall be securely fastened in a manner satisfactory to the superintendent, or his assistant in charge of the lock at the time, to prevent the vessel from moving about while the lock is being filled or emptied, and the lines, cables, and hawsers used for this purpose shall be attended as far as is necessary or required while the filling or emptying is in progress.

(i) No vessel which has iron or irons projecting from it or lumber or other cargo projecting over its sides shall enter the lock, except at such time and with such precautions to prevent damage to the lock or its appurtenances as the superintendent, or the assistant in charge of the lock at the time, may require.

(j) All persons, whether in charge of vessels or not, are prohibited from willfully or carelessly damaging the lock, any of its appurtenances or the grounds adjacent thereto, and from throwing any material of any kind into the lock. No line shall be attached to anything except the bollards and other fixtures provided for the purpose.

(k) Upon each passage through the lock, the master or clerk of a vessel shall make a statement of the kind and tonnage of the freight carried.

(l) No person shall cause or permit any vessel or boat of which he is in charge to remain in the lock or its approaches for a longer time than is necessary for the passage of the lock, unless he is especially permitted to do so by the superintendent or the assistant in charge of the lock at the time, and if such vessel or boat is, in the opinion of such superintendent or assistant, in a position to obstruct navigation it shall be removed at once as requested or directed by such superintendent or assistant.

(m) All registered merchant vessels shall pass through the lock in the order directed by the superintendent or the assistant in charge of the lock at the time. Unregistered craft will not be allowed to pass through the lock separately unless especially permitted by such superintendent or assistant.

(n) The lock shall be operated promptly for the passage of all vessels upon signal excepting only in such cases as are specifically provided for in this section.

[Regs., May 6, 1909]

§ 207.20 Cape Cod Canal, Massachusetts; use, administration and navigation.

(a) *Limit of Canal.* The canal, including approaches, extends from the Canal Station Minus 100 in Cape Cod Bay, approximately one and six-tenths (1.6) statute miles seaward of the Canal Breakwater Light, through dredged channels and land cuts to Cleveland Ledge Light in Buzzards Bay approximately four (4) statute miles southwest of Wings Neck.

(b) *Supervision.* (1) The movement of ships, boats and craft of every description through the canal and the operation and maintenance of the waterway and all property of the United States pertaining thereto shall be under the supervision of the Division Engineer, U.S. Army Engineer Division, New England, Corps of Engineers, Waltham, Massachusetts, or the authorized representative of the division engineer, the Engineer-In-Charge of the Cape Cod Canal. The division engineer or the Engineer-In-Charge from time to time will prescribe rules governing the dimensions of vessels which may transit the waterway, and other special conditions and requirements which will govern the movement of vessels using the waterway.

(2) The Engineer-In-Charge, through the marine traffic controller on duty, will enforce these regulations and monitor traffic through the canal. The marine traffic controller on duty is the individual responsible for interpretation of these regulations with respect to vessels transiting the canal. Vessels transiting the canal must obey the orders of the marine traffic controller.

(3) The government has tugs stationed at the West Boat Basin for emergency use on an on-call basis. A patrol vessel is manned and operational 24-hours a day.

(c) *Communications.* There is a marine traffic controller on duty 24 hours a day, seven days a week, in the traffic control center located at the Canal Administrative Office. The primary method of communications between the canal and vessels transiting will be by VHF-FM Marine radio. The traffic controller can also be contacted by telephone.

(1) For radio communications, call the traffic controller on channel 16 to establish contact. The transmissions will then be switched to channel 12 or 14 as the working channel to pass information. Channel 13 is also available at the canal office; however, the use of channel 13 should be limited to emergency situations or whenever vessels do not have one of the other channels. All four channels are monitored continuously by the traffic controller. Radio discipline will be adhered to in accordance with FCC rules and regulations.

(2) For telephone communications with the traffic controller, call (617) 759-4431.

(3) Vessels shall maintain a radio guard on Marine VHF-FM channel 13 during the entire passage through the canal.

(4) All radio communications in the vicinity of the canal are tape recorded for future reference.

(d) *Vessels allowed passage.* The canal is open for passage to all adequately powered vessels properly equipped and seaworthy, of sizes consistent with safe navigation as governed by the controlling depths and widths of the channel and the vertical and horizontal clearances of the bridges over the waterway. The granting of permission for any vessel to proceed through the waterway shall not relieve the owners, agents and operators of full responsibility for its safe passage. No vessel having a greater draft forward than aft will be allowed to transit the canal. Craft of low power and wind driven are required to have and use auxiliary power during passage throughout the canal as defined in paragraph (a) of this section. Low powered vessels will be required to await slack water or favorable current for canal transit.

(e) *Tows.* (1) Tows shall be made-up outside the canal entrances. All vessels engaged in towing other vessels not equipped with a rudder shall use two lines or a bridle and one tow line. If the vessel in tow is equipped with a rudder or a ship shaped bow, one tow line may be used. All tow lines of hawsers must be hauled as short as practicable for safe handling of the tows. No towboat will be allowed to enter the waterway with more than two barges in tow unless prior approval is granted by the Engineer-In-Charge; requests must be submitted 12 hours in advance of the passage.

(2) The maximum length of pontoon rafts using the canal will be limited to 600 feet, and the maximum width to 100 feet. Pontoon rafts exceeding 200 feet in length will be required to have an additional tug on the stern to insure that the tow is kept in line. The

tugs used must have sufficient power to handle the raft safely.

(3) Dead ships are required to transit the canal during daylight hours and must be provided with the number of tugs sufficient to afford safe passage through the canal. (A dead ship will not be allowed to enter the canal unless prior approval is granted by the Engineer-In-Charge; requests must be submitted 12 hours in advance of the passage).

(f) *Dangerous Cargoes.* The master or pilot of any vessel or tow carrying dangerous cargoes must notify the Marine Traffic Controller prior to entering the canal. Dangerous cargoes are defined as those items listed in 33 CFR 126.10 when carried in bulk (i.e., quantities exceeding 110 U.S. gallons in one tank) plus Class A explosives (commercial or military) as listed in 49 CFR 173.53 (commercial) and 46 CFR 146.29-100 (military), liquified natural gas and liquified petroleum gas. Transportation of dangerous cargoes through the canal shall be in strict accordance with existing regulations prescribed by law. In addition, vessels carrying dangerous cargoes shall comply with the following requirements.

(1) They must have sufficient horsepower to overcome tidal currents or they will be required to wait for favorable current conditions.

(2) Transits will be during daylight hours.

(3) No transit will be permitted when visibility conditions are unstable or less than 2 miles at the approaches and throughout the entire length of the canal.

(4) Transits must await a clear canal for passage.

(g) *Obtaining clearance.* (1) Vessels under 65 feet in length may enter the canal without obtaining clearance. All craft are required to make a complete passage through the canal except excursion craft which may operate and change direction within the canal in accordance with procedures coordinated with the marine traffic controller on duty. When the railroad bridge span is in the closed (down) position, all vessels are directed not to proceed beyond the points designated by stop signs posted east and west of the railroad bridge. Vessels proceeding with a fair tide (with the current) should turn and stem the current at the designated stop points until the railroad bridge is in the raised (open) position.

(2) Vessels 65 feet in length and over shall not enter the canal until clearance has been obtained from the marine traffic controller by radio. See paragraph (c) "Communications" for procedures. If a vessel, granted prior clearance, is delayed or stops at the mooring basins, state pier, or the Sandwich bulkhead, a second clearance must be obtained prior to continuing passage through the canal.

(3) Vessels will be given clearance in the order of arrival, except when conditions warrant one-way traffic, or for any reason an order of priority is necessary, clearance will be granted in the following order.

(i) First—To vessels owned or operated by the United States, including contractors' equipment employed on canal maintenance or improvement work.

(ii) Second—To passenger vessels.

(iii) Third—To tankers and barges docking and undocking at the Canal Electric Terminal.

(iv) Fourth—To merchant vessels, towboats, commercial fishing vessels, pleasure boats and miscellaneous craft.

(4) Procedures in adverse weather—Vessels carrying flammable or combustible cargoes as defined in 46 CFR 30.25 will be restricted from passage through the canal when visibility is less than ½ mile. Other vessels may transit the canal in thick weather by use of radar with the understanding that the United States Government will assume no responsibility: *And provided,* That clearance has been obtained from the marine traffic controller.

(h) *Traffic lights.* There are three sets of traffic lights showing red, green, and yellow that are operated on a continuous basis at the canal. The traffic lights apply to all vessels 65 feet in length and over. The traffic lights are a secondary system that is operated in support of the radio communications system. The traffic lights are located at the easterly canal entrance, Sandwich, and at the westerly entrance to Hog Island Channel at Wings Neck. A third traffic light is lo-

cated at the Canal Electric Terminal basin on the south side of the canal in Sandwich, and applies only to vessels arriving and departing that terminal.

(1) *Westbound traffic*—When the green light is on at the eastern (Cape Cod Bay) entrance, vessels may proceed westward through the canal. When the red light is on, any type of vessel 65 feet in length and over must stop clear of the Cape Cod Bay entrance channel. When the yellow light is on, vessels 65 feet in length and over and drawing less than 25 feet may proceed as far as the East Mooring Basin where they must stop. Prior to continuing passage through the canal, clearance must be obtained from the marine traffic controller.

(2) *Eastbound traffic*—When the green light is on at Wings Neck, vessels may proceed eastward through the canal. When the red light is on, vessels 65 feet and over in length and drawing less than 25 feet must keep southerly of Hog Island Channel Entrance Buoys Nos. 1 and 2 and utilize the general anchorage areas adjacent to the improved channel. Vessel traffic drawing 25 feet and over are directed not to enter the canal channel at the Cleveland Ledge Light entrance and shall lay to or anchor in the vicinity of Buzzards Bay Buoy No. 11 (FLW & Bell) until clearance is granted by the canal marine traffic controller or a green traffic light at Wings Neck is displayed. When the yellow light is on, vessels may proceed through Hog Island Channel as far as the West Mooring Basin where they must stop. Prior to continuing passage through the canal, clearance must be obtained from the marine traffic controller.

(i) *Railroad Bridge Signals.* The following signals at the Buzzards Bay Railroad Bridge will be given strict attention.

(1) The vertical lift span on the railroad bridge is normally kept in the raised (open) position except when it is lowered for the passage of trains, or for maintenance purposes. Immediately preceding the lowering of the span, the operator will sound two long blasts of an air horn. Immediately preceding the raising of the span, the operator will sound one long blast of an air horn. When a vessel or craft of any type is approaching the bridge with the span in the down (closed) position and the span cannot be raised immediately, the operator of the bridge will so indicate by sounding danger signals of four short blasts in quick succession.

(2) When the lift span is in the down (closed) position in foggy weather or when visibility is obscured by vapor, there will be four short blasts sounded from the bridge every two minutes.

(j) *Speed.* All vessels are directed to pass mooring and boat basin facilities, the state pier, and all floating plant engaged in maintenance operations of the waterway at a minimum speed consistent with safe navigation. In order to coordinate scheduled rail traffic with the passage of vessels, to minimize erosion of the canal banks and dikes from excessive wave wash and suction, and for the safety of vessels using the canal, the following speed regulations must be observed by vessels of all types, including pleasure craft. The minimum running time for the land cut between the East Mooring Basin (Station 35) and the Administration Office in Buzzards Bay (Station 388) is prescribed as follows:

Head Tide—60 Minutes
Fair Tide—30 Minutes
Slack Tide—45 Minutes

The minimun running time between the Administration Office (Station 388) and Hog Island Channel westerly entrance Buoy No. 1 (Station 661) is prescribed as follows:

Head Tide—46 Minutes
Fair Tide—23 Minutes
Slack Tide—35 Minutes

The running time at slack water will apply to any vessel which enters that portion of the canal between stations 35 and 661, within the period of one-half hour before or after the predicted time of slack water as given in the National Ocean Survey publication "Current Tables, Atlantic Coast, North America." The minimum running time during a head tide or a fair tide shall apply to any vessel which enters that portion of the canal between Station 35 and 661 at any time other than designated above for time requirements at slack tide. Vessels of any kind

unable to make a through transit of the land cut portion of the canal against a head current of 6.0 knots within a maximum time limit of 2 hours 30 minutes shall be required to obtain the assistance of a helper tug at the vessel owner's expense or await favorable tide conditions prior to receiving clearance from the marine traffic controller. In the event vessels within the confines of the canal fail to perform and are unable to make sufficient headway against the currents, the marine traffic controller may activate a helper tug in accordance with paragraph (k) of this section.

(k) *Management of vessels.* (1) Vessels within the limits of the canal shall comply with applicable navigation rules.

(2) Vessels within the limits of the canal shall comply with the applicable requirements for the use of pilots established by the Coast Guard, including but not limited to those contained in 46 CFR 157.20-40. Vessels will not be granted clearance to enter the canal until the marine traffic controller has been notified of the name of the pilot who will be handling the vessel.

(3) The master of a vessel will be responsible for notifying the marine traffic controller as soon as an emergency situation appears to be developing. When in the opinion of the marine traffic controller an emergency exists, he/she can require the master to accept the assistance of a helper vessel. Whether or not assistance is provided by a government vessel or by a private firm under contract to the government, the government reserves the right to seek compensation from the vessel owners for all costs incurred.

(4) Right of Way—All vessels proceeding with the current shall have the right of way over those proceeding against the current. All craft up to 65 feet in length shall be operated so as not to interfere with the navigation of vessels of greater length.

(5) Passing of vessels—The passing of one vessel by another when proceeding in the same direction is prohibited except when a leading low powered ship is unable to make sufficient headway. However, extreme caution must be observed to avoid collision, and consideration must be given to the size of the ship to be overtaken, velocity of current and wind, and atmospheric conditions. Masters of vessels involved shall inform the marine traffic controller on duty of developing situations to facilitate coordination of vessel movement. Meeting or passing of vessels at the easterly end of the canal between Station Minus 40 and Station 60 will not be permitted, except in cases of extreme emergency, in order to allow vessels to utilize the center line range to minimize the effects of hazardous eddies and currents. Due to bank suction and tidal set, meeting and passing of vessels at the following locations will be avoided:

(i) Sagamore Bridge.

(ii) Bourne Bridge.

(iii) Railroad Bridge.

(iv) Mass Maritime Academy.

(6) Unnecessary delay in canal—Vessels and other type crafts must not obstruct navigation by unnecessarily idling at low speed when entering or passing through the canal.

(7) Stopping in the waterway—Anchoring in the Cape Cod Canal Channel is prohibited except in emergencies. For the safety of canal operations it is mandatory that the masters of all vessels anchoring in or adjacent to the canal channel (Cape Cod Bay to Cleveland Ledge Light) for any reason, immediately notify the marine traffic controller.

(8) Utilization of mooring and boat basins and the Sandwich Bulkhead—Vessels mooring or anchoring in the mooring or boat basins at the Sandwich bulkhead must do so in a manner not to obstruct or impede vessel movements to and from facilities. These facilities are of limited capacity and permission to occupy them for periods exceeding 24 hours must be obtained in advance from the marine traffic controller. Mooring in the West Boat Basin at Buzzards Bay, near the railroad bridge, is not permitted except in an emergency. Fishing boats, yachts, cabin cruisers and other craft utilizing the East Boat Basin on the south side of the canal at Sandwich, Massachusetts are not permitted to tie up at the Corps of Engineers landing float or anchor in a manner to prevent canal

floating plant from having ready access to the float. All vessels or barges left unattended must be securely tied with adequate lines or cables. The United States assumes no liability for damages which may be sustained by any craft using the bulkhead at Sandwich or the canal mooring or boat basin faciiities. Vessels shall not be left unattended along the face of the government bulkhead. A responsible person with authority to authorize and/or accomplish vessel movement must remain onboard at all times.

(l) *Grounded, wrecked or damaged vessels.* In the event a vessel is grounded, or so damaged by accident as to render it likely to become an obstruction and/or hazard to navigation in the waterway, the division engineer or the division engineer's authorized representative shall supervise and direct all operations that may be necessary to remove the vessel to a safe locality.

(m) *Commerical statistics.* Masters of vessels shall furnish the marine traffic controller on each passage through the canal their own names, the pilots' name and an accurate oral or written statement of passengers, freight, and other pertinent vessel data as required.

(n) *Deposit of refuse.* No oil or other allied liquids, ashes, or materials of any kind shall be thrown, pumped or swept into the canal or its approaches from any vessel or craft using the waterway, nor shall any refuse be deposited on canal grounds, marine structures, or facilities.

(o) *Trespass to property.* Subject to the provisions of paragraph (q) of this section trespass upon the canal property is prohibited.

(p) *Bridges over the canal.* The government owns, operates and maintains all bridges across the canal which include one railroad bridge and two highway bridges. The division engineer or his/her authorized representative may establish rules and regulations governing the use of these bridges.

(q) *Recreational use of canal*—(1) *Policy.* (i) It is the policy of the Secretary of the Army acting through the Chief of Engineers to provide the public with safe and healthful recreational opportunities within all water resource development projects administered by the Chief of Engineers, including the canal and government lands part thereof. Any recreational use of the canal and those lands shall be at the users own risk.

(ii) All water resource development projects open for recreational use shall be available to the public without regard to sex, race, creed, color or national origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person or persons because of sex, race, creed, color or national origin in the conduct of operations under the lease, license or concession contract.

(2) *Motor vehicles.* Operation of motor vehicles, motorcycles, minibikes, mopeds, motorbikes, snowmobiles, and all types of off-road vehicles is prohibited on government lands and service roads except in areas specifically designated for such operation.

(3) *Swimming.* Swimming, skin diving, snorkling, and scuba diving in the canal between the east entrance in Cape Cod Bay and the west entrance at Cleveland Ledge Light are prohibited. Diving operations may be authorized by the Engineer-In-Charge in conjunction with operation and maintenance of the canal.

(4) *Camping.* Overnight tenting or camping on governmment land is prohibited except in areas designated by the division engineer. Bourne Scenic Park and Scusset Beach State Reservation are designated camping areas. Persons asleep during hours of darkness in or out of vehicles shall be considered as campers.

(5) *Fishing.* Persons may fish with rod and line from the banks of the canal on Federally owned property except areas designated by the division engineer. Fishing and lobstering by boat in the Cape Cod Canal between the east entrance in Cape Cod Bay and the west entrance at Cleveland Ledge Light are prohibited. Fishing by boat is permitted in the area west of the State Pier in Buzzards Bay, provided that all craft stay out of the channel defined by United States Coast Guard buoys and beacons. Fish and game laws of the United States and the Commonwealth of Massachusetts will be enforced.

(6) *Hunting.* Hunting is permitted in accordance with game laws of the United States and the Commonwealth of Massachusetts.

(7) *Fires.* No open fires will be allowed at any time except by special permission and then shall be continuously overseen and in compliance with state or town laws.

(8) *Control of animals and pets.* (i) No person shall bring or have horses in camping, picnic, swimming beaches or developed recreation areas.

(ii) No person shall bring dogs (except seeing eye dogs), cats, or other pets into developed recreation areas unless penned, caged; or on a leash no longer than six feet or otherwise under physical restrictive controls at all time.

(9) *Restrictions.* (i) The division engineer may establish a reasonable schedule of visiting hours for all or portions of the project area and close or restrict the public use of all or any portion of the project by the posting of appropriate signs indicating the extent and scope of closure. All persons shall observe such posted restrictions.

(ii) The operation or use of any audio or other noise producing device including, but not limited to, communications media and vehicles in such a manner as to unreasonably annoy, endanger persons or affect vessel traffic through the canal is prohibited.

(10) *Explosives, firearms, other weapons and fireworks.* (i) The possession of loaded firearms, ammunition, projectile firing devices, bows and arrows, crossbows, and explosives of any kind is prohibited unless in the possession of a law enforcement officer or Government employee on official duty or used for hunting during the hunting season as permitted under paragraph (q)(6) of this section, or unless written permission has been received from the division engineer.

(ii) The possession or use of fireworks is prohibited unless written permission has been received from the division engineer.

(11) *Public property.* Destruction, injury, defacement or removal of public property including natural formations, historical and archeological features and vegetative growth is prohibited without written permission of the division engineer.

(12) *Abandonment of personal property.* (i) Abandonment of personal property is prohibited. Personal property shall not be left unattended upon the lands or waters of the project except in accordance with this regulation. After a period of 24 hours, abandoned or unattended personal property shall be impounded and stored at a storage point designated by the division engineer. The division engineer shall assess a reasonable impoundment fee, which shall be paid before the impounded property is returned to its owners.

(ii) The division engineer shall, by public or private sales or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into his/her custody or control. However, efforts should be made to find the owner, the owner's heirs or next of kin, or legal representatives. If the owner, heirs or next of kin, or legal representative is determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at last known address. When diligent effort to determine the owner, owner's heirs or next of kin, or legal representative is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of $25 or more the property generally may not be disposed of until three months after the date it is received at the Cape Cod Canal Administrative Office. The net proceeds from the sale of property shall be placed into the Treasury of the United States as miscellaneous receipts.

(13) *Lost and found articles.* All abandoned/lost articles shall be deposited by the finder at the Canal Administration office or with Canal ranger. The finder shall leave his/her name, address, and phone number. All lost articles shall be disposed of in accordance with procedures set forth in paragraph (q)(12) of this section.

(14) *Advertisement.* Advertising by the use of billboards, signs, markers, audio devices or any other means

whatever is prohibited unless written permission has been received from the division engineer.

(15) *Commercial activities.* The engaging in or solicitation of business without the written permission of the division engineer is prohibited.

(16) *Unauthorized structures.* The construction or placing of any structure of any kind under, upon or over the project lands or water is prohibited unless a permit has been issued by the division engineer. Structures not under permit are subject to summary removal by the division engineer.

(17) *Special events.* Prior approval must be obtained from the Engineer-In-Charge for special events, recreational programs and group activities. The public shall not be charged any fee by the sponsor of such event unless the division engineer has approved in writing the proposed schedule of fees.

(18) *Interference with government employees.* Interference with any government employee in the conduct of official duties pertaining to the administration of these regulations is prohibited.

[45 FR 51552, Aug. 4, 1980; 45 FR 60430, Sept. 12, 1980]

§ 207.37 Jamaica Bay, Long Island, N.Y., seaplane restricted area.

(a) *The restricted area.* An area in Jamaica Bay bounded as follows: Beginning at latitude 40°36′22″ N., longitude 73°52′47″ W.; thence 157° True, 1,125 yards to latitude 40°35′52″ N., longitude 73°52′30″ W.; thence 113° True, 3,020 yards to latitude 40°35′17″ N., longitude 73°50′42″ W.; thence 194° True, 250 yards to latitude 40°35′10″ N., longitude 73°50′44″ W.; thence 238° True, 3,270 yards to latitude 40°34′18″ N., longitude 73°52′31″ W.; thence 326° True, 465 yards to latitude 40°34′29″ N., longitude 73°52′42″ W.; thence 30° True, 875 yards to latitude 40°34′52″ N., longitude 73°52′25″ W.; thence 344° True, 3,000 yards to latitude 40°36′17″ N., longitude 73°52′58″ W.; and thence 60° True, 325 yards to the point of beginning; excluding therefrom Nova Scotia Bar defined by lines connecting the following: From latitude 40°35′33″ N., longitude 73°52′12″ W.; thence 112° True, 1,500 yards to latitude 40°35′17″ N., longitude 73°51′17″ W.; thence 163° True, 235 yards to latitude 40°35′10″ N., longitude 73°51′14″ W.; thence 236° True, 1,650 yards to latitude 40°34′43″ N., longitude 73°52′08″ W.; thence 345° True, 1,350 yards to latitude 40°35′22″ N., longitude 73°52′21″ W.; and thence 34° True, 440 yards to the point of beginning.

(b) *The regulations.* (1) Vessels shall not anchor or moor within the restricted area.

(2) All vessels traversing the area shall pass directly through without unnecessary delay, and shall give seaplanes the right-of-way at all times.

(3) The regulations in this section shall be enforced by the Commander, Third Coast Guard District, and such agencies as he may designate.

[20 FR 8815, Dec. 1, 1955, as amended at 34 FR 7575, May 10, 1969]

§ 207.50 Hudson River Lock at Troy, N.Y.; navigation.

(a) *Authority of lockmaster.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants.

(b) *Signals.* Steamboats or tows desiring lockage in either direction shall give notice to the lock tenders, when not more than three-fourths mile from the lock, by one long blast of (10 seconds' duration), followed by one short blast (of three seconds' duration), or a whistle or horn. When the lock is ready for entrance a green light will be shown from the river wall. An amber light will indicate that the lock is being made ready for entrance. A red light will indicate that the ap-

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proaching vessel must wait. Whenever local conditions make it advisable the visual signals will be supplemented by sound signals as follows:

(1) One long blast of a horn to indicate that the vessel must wait.

(2) One short blast of a horn to indicate that the lock is being made ready for entrance.

(3) Two short blasts of a horn to indicate permission to enter the lock.

(4) Four short and rapid blasts to attract attention, indicate caution, and signal danger.

(c) *Draft of boats.* Deep-draft boats must clear the miter sills by at least 3 inches. Boats drawing too much water will not be allowed to lighter cargo in the entrances.

(d) *Precedence at the lock.* The vessel arriving first at the lock shall be first to lock through; but precedence shall be given to vessels belonging to the United States and to commercial vessels in the order named. Arrival posts or markers may be established ashore above or below the lock. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the lock within the meaning of this paragraph. If the traffic is crowded in both directions; up and down lockages will usually be made alternately, but the lock tender may permit two or more lockages to be made at one time in the same direction when this will not cause unreasonable delay. In case two or more boats or tows are to enter for the same lockage, they shall enter as directed by the lock tender. No boat shall run ahead of another while in the lock. The boat that enters first shall leave first.

(e) *Lockage of pleasure boats.* The lockage of pleasure boats, house boats or like craft shall be expedited by locking them through with commercial craft (other than barges carrying gasoline or highly hazardous materials) in order to utilize the capacity of the lock to its maximum. Lockage of pleasure craft may be made with commercial craft carrying petroleum products other than gasoline, provided a clear distance of at least 100 feet between such vessels can be maintained in the lock. If, after the arrival of such craft, no separate or combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockage shall be made.

(f) *Stations while waiting.* Boats waiting their turn to enter the lock must lie at a sufficient distance from the lock and in such a position as to leave sufficient room for the passage of boats leaving the lock.

(g) *Unnecessary delay.* (1) Boats must not cause delay in entering or leaving the lock. Masters and pilots will be held to a strict accountability in this matter, and those with tows must provide enough men to move barges promptly. Boats failing to enter the lock with reasonable promptness after being signaled will lose their turn.

(2) Tugboats arriving with their tows in a condition which will delay locking shall lose their turn if so ordered by the lock tender. Leaking boats may be excluded until put in shape to be passed through safely.

(h) *Mooring.* Boats in the lock or waiting in the entrance shall be moored where directed by the lock tender, by bow, stern, and spring lines, to the snubbing posts or line hooks. Tying boats to the lock ladders is strictly prohibited.

(i) *Protection of lock gates.* Boats will not be permitted to enter or leave the lock until the lock gates are at rest in the gate recesses and the lock tender has directed the boat to start.

(j) *Damage to walls, etc.* All craft passing through the lock must be free from projections or sharp corners which might scar the walls or injure other parts. Steamboats must be provided with suitable fenders, etc. One man shall be kept at the head of every tow till it has cleared the lock and guide walls, and shall use the fender to prevent scarring the walls.

(k) *Handling machinery.* None but employees of the United States will be allowed to move any valve, gate, or other machinery belonging to the lock.

(l) *Refuse in lock.* Throwing ashes, refuse, or other obstruction in the entrances or in the lock, or on the walls thereof, and passing coal from flats or barges to a steamboat while in the lock is prohibited.

(m) *Commercial statistics.* Masters or clerks of boats shall furnish in writing to lock tenders such statistics of passengers and cargoes as may be required.

(n) *Trespass on United States property.* Trespass on United States property, or willful injury to the banks, masonry, fences, trees, houses, machinery, or other property of the United States at or near the lock is strictly prohibited.

(o) *Penalties.* In addition to the penalties prescribed by law, boats which fail to comply with the regulations in this section will thereafter be refused lockage until assurances have been received, satisfactory to the District Engineer, Corps of Engineers, New York, New York, that the regulations will be complied with.

[Regs., Mar. 24, 1916, as amended at 16 FR 7210, July 24, 1951; 26 FR 352, Jan. 18, 1961]

§ 207.60 Federal Dam, Hudson River, Troy, N.Y.; pool level.

(a) Whenever the elevation of the pool created by the Federal dam at Troy, N.Y., shall fall to a point level with the crest of the main spillway, the elevation of which is +14.33 feet mean sea level, the operation of the power plant shall cease and further operation thereof shall be suspended until such time as the water level rises to or above +14.43 feet mean sea level.

(b) Flashboards may be maintained on the section of the spillway of the dam having an elevation of +14.33 feet mean sea level in order to increase the elevation of this section to an elevation equal to that of the auxiliary spillway, or +16.33 feet mean sea level: *Provided,* That the flashboards are so erected as to drop automatically when the pool level rises to an elevation of +18.5 feet mean sea level, and conform in other respects to the plans attached thereto.

(c) The tide staff to be used in determining the elevation of the pool shall be the ceramic tide staff now located on the westerly face of the east lock wall north of the northerly gates, the zero of which is set 2 feet below mean sea level.

(d) The regulations of the pool level and the maintenance of flashboards shall be subject to the supervision and approval of the District Engineer, New York City.

[Regs., Dec. 2, 1924, as amended at 25 FR 8907, Sept. 16, 1960]

§ 207.90 Delaware River, Pa.; use of Government landing pier at Marcus Hook.

(a) This wharf must not be used for storage of material. A clear, unobstructed passageway not less than 14 feet wide must be left at the wharf approach.

(b) The dragging of any heavy articles over or along the wharf is not allowed, nor the dragging of one end of a log or timber the other end of which is carried on trucks.

(c) No load exceeding 1½ tons, exclusive of wagon and team, is allowed to cross the bridge without permission of the officer in charge.

(d) Anyone violating paragraphs (a) to (c) of this section or committing any other acts of carelessness or violence which results in injuring the wharf will be reported to the United States district attorney for prosecution as provided by law.

[Rules, Apr. 29, 1904]

§ 207.100 Inland waterway from Delaware River to Chesapeake Bay, Del. and Md. (Chesapeake and Delaware Canal); use, administration, and navigation.

(a) *Applicability.* The regulations in this section are applicable to that part of the inland waterway from Delaware River to Chesapeake Bay, Del. and Md., between Reedy Point, Delaware River, and Old Town Point Wharf, Elk River.

(b) *Supervision.* The District Engineer, Corps of Engineers, Philadelphia, Pa., has administrative supervision over the waterway and is charged with the enforcement of these regulations. The District Engineer from time to time will prescribe rules governing the dimensions of vessels which may transit the waterway, and other special conditions and requirements which will govern the movement of vessels using the waterway. The District Engineer's representative is the Chesapeake City Resident Engineer. The Chesapeake City Resident Engineer through the dispatcher on duty

will enforce these regulations and monitor traffic through the canal.

(c) *Safe navigation required.* Clearance for any vessel to enter or pass through any part of the waterway will be contingent on the vessel's having adequate personnel, machinery, and operative devices for safe navigation. In the event of question as to the ability of any vessel to navigate the waterway safely, a ruling will be made by the dispatcher. The owner, agent, master, pilot, or other person in charge of the vessel concerned may appeal the dispatcher's ruling to the District Engineer whose decision shall be final. A clearance by the dispatcher for a vessel's passage through the waterway shall not relieve the owners, agents, and operators of the vessel of full responsibility for its safe passage.

(d) *Radio equipment.* Requirements for radio equipment on vessels transiting the waterway are as described in rules governing traffic through the waterway issued by the District Engineer. Vessels not having the mandatory radio equipment will not be permitted to transit the canal.

(e) *Anchorage and wharfage facilities.* The anchorage basin at Chesapeake City and free wharfage facilities on the west side of the anchorage basin are available for small vessels only. These facilities are of limited capacity, and permission to occupy them for periods exceeding 24 hours must be obtained in advance from the dispatcher at Chesapeake City.

(f) *Projections from vessels.* No vessel carrying a deck load which overhangs or projects beyond the sides of the vessel will be permitted to enter or pass through the waterway. Vessels carrying rods, poles, or other gear extending above the top of the vessel's mast will be required to lower such equipment to a level with the top of the mast before entering the waterway.

(g) [Reserved]

(h) *Tows*—(1) *Integrated pusher-type tows.* The maximum overall length and extreme breadth of this type of tow which may transit the canal are as described in rules governing traffic through the waterway issued by the District Engineer.

(2) *All other types of tows.* All ships or tugs engaged in towing vessels not equipped with a rudder, whether light or loaded, shall use two towlines or a bridle on one towline. If the vessel in tow is equipped with a rudder, one towline without a bridle may be used. All towlines must be hauled as short as practicable for safe handling of the tows. No towboat will be permitted to enter the waterway with more than two loaded, or three light barges. Two or more barges or other vessels, not self-propelled, shall be towed abreast and not in tandem, using two towlines unless the towboat is made fast alongside the tow.

(i) [Reserved]

(j) *Traffic lights.* Traffic lights are located at Reedy Point and Old Town Point Wharf. These traffic lights are described in the rules governing traffic through the waterway issued by the District Engineer.

(k) *Drawbridges.* Operation of the Penn Central vertical lift bridge across the canal will be in accordance with regulations promulgated by the U.S. Coast Guard, § 117.235a *Chesapeake and Delaware Canal, Del.*, of this chapter.

(l) [Reserved]

(m) *Refuse and oil.* The depositing of trash, refuse, debris, oil, or other material in the waterway or upon the banks or right-of-way is prohibited. Violators are subject to penalties as prescribed by Federal law.

(n) *Damage to waterway property.* Damage to the waterway, lands, banks, bridges, jetties, piers, fences, buildings, trees, telephone lines, lighting structures, or any other property of the United States pertaining to the waterway is prohibited.

(o) *Fish and game.* The fish and game laws of the United States and of the States of Delaware and Maryland, within their respective bounds, will be enforced upon the waters and lands pertaining to the waterway owned by the United States.

(p) *Grounded, wrecked, or damaged vessels.* In the event a vessel is grounded or wrecked in the waterway or is damaged by accident or successive mechanical breakdown, the owner, agent, or operator shall take prompt action to prevent the vessel from becoming or

remaining an obstruction to navigation, and such persons shall also respond to such instructions as may be issued by the District Engineer to prevent the vessel from becoming or remaining a menace to navigation. The lack of reasonable response from owner, agent, or operator may be deemed sufficient cause for the District Engineer to undertake repair or removal of the vessel as he may determine to be in the best interest to the Government.

(q) *Commercial statistics.* Owners, designated agents, or pilots of vessels transiting the waterway will furnish the District Engineer statistics on passengers, freight, and vessel data as described in the rules governing traffic through the waterway issued by the District Engineer. Failure of owners, agents, or pilots to submit these reports may result in suspension of the privilege to use the canal.

(r)-(s) [Reserved]

(t) *Pilotage.* Any pilot who pilots in the canal shall comply with State laws or Coast Guard regulations and must be licensed for this waterway by the U.S. Coast Guard.

(u) *Vessels difficult to handle.* Vessels which are observed by the pilot or master in charge, to be difficult to handle, or which are known to have handled badly on previous trips, must transit the canal during daylight hours and must have tug assistance. Such vessels must obtain permission from the dispatcher to enter the canal and must be provided with the number of tugs sufficient to afford safe passage. Agents must make their own arrangements for tug assistance. Such eastbound vessels must clear Reedy Point Bridge, and such westbound vessels the Chesapeake City Bridge, before dark.

[37 FR 9870, May 16, 1972, as amended at 42 FR 57961, Nov. 7, 1977]

§ 207.105 Delaware Bay off Cape Henlopen, Del.; naval restricted area.

(a) *The area.* Beginning at a point on the south shore of Delaware Bay at longitude 75°06'12"; thence to latitude 38°47'25", longitude 75°06'20"; thence to latitude 38°47'48", longitude 75°06'00"; thence to latitude 38°50'43", longitude 75°02'11"; thence to latitude 38°49'16", longitude 74°59'35"; thence to a point on the shore at latitude 38°46'09"; thence northwesterly and southwesterly along the shore at Cape Henlopen to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawl fishing, crabbing, dragging, grappling, and towing with hawser on bottom are prohibited in the area and no object attached to a vessel shall be placed on or near the bottom.

(2) This section does not apply to anchored floating navigational aids or to placement or removal of such aids by the Coast Guard.

(3) This section does not apply to vessels engaged in commercial or pleasure boat fishing provided anchors, trawls, and ground tackle are not used.

(4) The regulations in this section shall be enforced by the Commandant, Fourth Naval District, and such agencies as he may designate.

[18 FR 4047, July 10, 1953]

§ 207.116 Severn River at Annapolis, Md.; experimental test area, U.S. Navy Marine Engineering Laboratory.

(a) *The restricted area.* The waters of Severn River shoreward of a line beginning at the southeasternmost corner of the U.S. Navy Marine Engineering Laboratory sea wall and running thence southwesterly perpendicular to the main Severn River channel, approximately 560 feet, thence northwesterly parallel to and 50 feet shoreward of the edge of the channel, 1,035 feet, and thence northeasterly perpendicular to the channel, approximately 600 feet, to the shore. Spar buoys will mark the corners of the area adjacent to the channel.

(b) *The regulations.* (1) No vessel or person other than specifically authorized military and naval vessels and persons shall enter or remain in the area during its use for experimental purposes. At all other times vessels and persons may use the area without restriction.

(2) The area will be in use intermittently, and this use will be signified by the presence of white-painted boats or floats, which will be lighted at night.

(3) Upon observing the boats or floats referred to in paragraph (b)(2)

of this section, or upon being warned, vessels and persons shall immediately vacate the area and remain outside the area during the period of use.

(4) The regulations in this section shall be enforced by the Commandant, Severn River Naval Command, and such agencies as he may designate.

[17 FR 2573, Mar. 25, 1952, as amended at 30 FR 5631, Apr. 21, 1965]

§ 207.117 Severn River, at U.S. Naval Academy Santee Basin, Annapolis, Md.; naval restricted area.

(a) *The area.* The waters within the U.S. Naval Academy Santee Basin and adjacent waters of Severn River inclosed by a line beginning at the northeast corner of Dewey Field seawall; thence to latitude 38°59′03″, longitude 76°28′47.5″; thence to latitude 38°58′58″, longitude 76°28′40″; and thence to the northwest corner of Farragut Field seawall.

(b) *The regulations.* (1) No person in the water, vessel or other craft shall enter or remain in the restricted area at any time except as authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, Annapolis, Md., and such agencies as he may designate.

[32 FR 10299, July 13, 1967]

§ 207.125 Patuxent River, Md.; restricted areas, U.S. Naval Air Test Center, Patuxent River, Md.

(a) Except in the gut off the tip of Point Patience, no person in the water and no craft shall approach closer than 75 yards to the beaches, shoreline, or piers of the area formerly occupied by the U.S. Naval Mine Warfare Test Station, or of U.S. Naval Air Station property. A person in the water or a civilian craft shall not approach rafts, barges, or platforms closer than 100 yards.

(b) Diving tenders will exhibit a square red flag with white X when underwater diving takes place from naval small craft. At such times, persons in the water and civilian craft shall stay at least 200 yards clear of these vessels and the civilian craft shall proceed at a speed not greater than five knots when within 1,000 yards thereof.

(c) On occasions, seaplane landings and takeoffs will be practiced in the seadrome area north of the U.S. Naval Air Station, Patuxent River. This area includes those waters of the Patuxent River between Town Point and Hog Point shoreward of a line described as follows: Beginning at a point on the shore just west of Lewis Creek, bearing 161°30′ true, 2,000 yards from Point Patience Light; thence to a point bearing 130° true, 1,850 yards from Point Patience Light; thence to a point bearing 247°30′ true, 3,650 yards from Drum Point Light; thence to a point bearing 235° true, 2,060 yards from Drum Point Light; thence to a point bearing 129° true, 700 yards from Drum Point Light; thence to a point bearing 137° true, 1,060 yards from Drum Point Light; and thence to a point on the shore west of Harper Creek entrance, bearing 158°30′ true, 1,900 yards from Drum Point Light. Operations will be indicated by day by a square white flag with square blue center, and by night by one green light for operations in an easterly direction, or by two vertical green lights for operations in a westerly direction, all signals to be exhibited from Patuxent River Boathouse seawall at the U.S. Naval Air Test Center. In addition, crash boats will patrol the landing lanes during the operations, and by night float lights will mark the landing lanes. At such times as the above signals are exhibited the following restriction will apply to boating and to persons in the waters adjacent to the U.S. Naval Air Station in the area westward of Fishing Point: Persons in the water and boats will proceed across the seaplane operating area only in accordance with instructions from crash boats; will not enter the seaplane basins; and will not use the areas adjacent to seaplane basins.

(d) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Air Station, Patuxent River, Md., and such agencies as he may designate.

[30 FR 4198, Mar. 31, 1965]

§ 207.126 Gunston Cove, at Whitestone Point, Va.; U.S. Army restricted area.

(a) *The area.* The waters within an area beginning at a point on the shoreline at longitude 77°08'36"; thence to latitude 38°40'22", longitude 77°08'39"; thence to latitude 38°40'14", longitude 77°08'22"; thence to a point on the shoreline at longitude 77°08'18" and thence along the shoreline to the point of beginning.

(b) *The regulations.* No person, vessel, or other craft shall enter or remain in the area at any time except as authorized by the enforcing agency.

(c) The regulations in this section shall be enforced by the District Engineer, U.S. Army Engineer District, Philadelphia, Pa., and such agencies as he may designate.

[31 FR 16560, Dec. 28, 1966]

§ 207.128 York River, Va.; naval prohibited and restricted areas.

(a) *The areas—(1) Naval mine service-testing area (prohibited).* A rectangular area surrounding Piers 1 and 2, Naval Weapons Station, and extending upstream therefrom, beginning at a point on the shore line at latitude 37°15'25" N., longitude 76°32'32" W.; thence to latitude 37°15'42" N., longitude 76°32'06" W.; thence to latitude 37°15'27" N., longitude 76°31'48" W.; thence to latitude 37°15'05" N., longitude 76°31'27" W.; thence to a point on the shore line at latitude 37°14'51" N., longitude 76°31'50" W.; and thence along the shore line to the point of beginning.

(2) *Naval mine service-testing area (restricted).* A rectangular area adjacent to the northeast boundary of the prohibited area described in subparagraph (1) of this paragraph, beginning at latitude 37°16'00" N., longitude 76°32'29" W.; thence to latitude 37°16'23" N., longitude 76°32'00" W.; thence to latitude 37°15'27" N., longitude 76°30'54" W.; thence to latitude 37°15'05" N., longitude 76°31'27" W.; thence to latitude 37°15'27" N., longitude 76°31'48" W.; thence to latitude 37°15'42" N., longitude 76°32'06" W.; thence to latitude 37°15'40" N., longitude 76°32'09" W.; and thence to the point of beginning.

(3) *Explosives-Handling Berth (Naval).* A circular area of 600 yards radius with its center at latitude 37°13'56" N., longitude 76°28'48" W.

(b) *The regulations.* (1) All persons and all vessels other than naval craft are forbidden to enter the prohibited area described in paragraph (a)(1) of this section.

(2) Trawling, dragging, and net-fishing are prohibited, and no permanent obstructions may at any time be placed in the area described in paragraph (a)(2) of this section. Upon official notification, any vessel anchored in the area and any person in the area will be required to vacate the area during the actual mine-laying operation. Persons and vessels entering the area during mine-laying operations by aircraft must proceed directly through the area without delay, except in case of emergency. Naval authorities are required to publish advance notice of mine-laying and/or retrieving operations scheduled to be carried on in the area, and during such published periods of operation, fishing or other aquatic activities are forbidden in the area. No vessel will be denied passage through the area at any time during either mine-laying or retreiving operations.

(3) The Explosives-Handling Berth (Naval) described in paragraph (a)(3) of this section is reserved for the exclusive use of naval vessels and except in cases of emergency no other vessel shall anchor therein without the permission of local naval authorities, obtained through the Captain of the Port, U.S. Coast Guard, Norfolk, Va. There shall be no restriction on the movement of vessels through the Explosive-Handling Berth.

(4) Vessels shall not be anchored, nor shall persons in the water approach within 300 yards of the perimeter of the Explosives-Handling Berth when that berth is occupied by a vessel handling explosives.

(5) The regulations of this section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he may designate.

(Secs. 1-4, 40 Stat. 892, sec. 1, 38 Stat. 800; 33 U.S.C. 3, 471)

[26 FR 11198, Nov. 28, 1961, as amended at 27 FR 2465, Mar. 14, 1962; 30 FR 220, Jan. 8, 1965; 35 FR 4552, Mar. 14, 1970]

§ 207.129 York River adjacent to Cheatham Annex Depot, Naval Supply Center, Williamsburg, Virginia; restricted area.

(a) *The area.* The waters of York River bounded as follows: Beginning at a point on shore at Cheatham Annex Depot at latitude 37°17′14″ N., longitude 76°35′38″ W.; thence to a point offshore at latitude 37°17′52″ N., longitude 76°35′20″ W.; thence approximately parallel to the shore to a point at latitude 37°17′23″ N., longitude 76°34′39″ W.; thence to the shore at latitude 37°16′58″ N., longitude 76°35′03″ W.; and thence along the shore at Cheatham Annex Depot to the point of beginning.

(b) *The regulations.* (1) No loitering will be permitted within the area. Oystermen may work their own leaseholds or public bottom within the area, provided they obtain special permission from the Officer in Charge, Cheatham Annex Depot, Naval Supply Center, Williamsburg, Virginia.

(2) The regulations in this section shall be enforced by the Officer in Charge, Cheatham Annex Depot, U.S. Naval Supply Center, Williamsburg, Virginia.

[22 FR 4814, July 9, 1957]

§§ 207.152—207.152a [Reserved]

§ 207.152b James River between the entrance to Skiffes Creek and Mulberry Point, Va.; army training and small craft testing area.

(a) *The restricted area.* Beginning on the shore at latitude 37°09′54″ N., longitude 76°36′25″ W.; thence westerly to latitude 37°09′50″ N., longitude 76°37′45.5″ W.; thence southerly to latitude 37°09′00″ N., longitude 76°38′05″ W.; thence southerly to latitude 37°08′22″ N., longitude 76°37′55″ W.; thence due east to the shore at latitude 37°08′22″ N., longitude 76°37′22″ W.; thence northerly along the shore to the point of beginning.

(b) *The regulations.* (1) No vessels other than Department of the Army vessels, and no persons other than persons embarked in such vessels shall remain in or enter the restricted area except as provided in paragraph (b)(2) of this section.

(2) Nothing in the regulations of this section shall prevent the harvesting and cultivation of oyster beds or the setting of fish traps within the restricted area under regulations of the Department of the Army, nor will the passage of fishing vessels to or from authorized traps be unreasonably interfered with or restricted.

(3) Vessels anchored in the area shall be so anchored as not to obstruct the arc of visibility of Deepwater Shoals Light.

(4) The Commanding General, Fort Eustis, Va., will, to the extent possible give public notice from time to time through local news media and the Coast Guard's Local Notice to Mariners of the schedule of intended Army use of the restricted area.

(5) The continuation of the restricted area for more than 3 years after the date of its establishment shall be dependent upon the outcome of the consideration of a request for its continuance submitted to the District Engineer, U.S. Army Engineer District, Norfolk, Virginia, by the using agency at least 3 months prior to the expiration of the 3 years.

(6) The regulations in this section shall be enforced by the Commanding General, Fort Eustis, Va., and such agencies as he may designate.

[37 FR 4337, Mar. 2, 1972]

§ 207.153 Elizabeth River, Southern Branch, Va., naval restricted areas.

(a) *The areas*—(1) *St. Helena Annex Area.* Beginning at a point at St. Helena Annex of the Norfolk Naval Shipyard, on the eastern shore of Southern Branch of Elizabeth River, at latitude 36°49′43″, longitude 76°17′26.5″; thence in a southwesterly direction to a point on the eastern boundary of Norfolk Harbor 40-foot channel at latitude 36°49′42″, longitude 76°17′33″; thence in a southerly direction along the eastern boundary of Norfolk Harbor 40-foot channel to latitude 36°49′28″, longitude 76°17′27″; thence easterly to the shore at latitude 36°49′28″, longitude 76°17′22″; and

thence, northerly along the shore to the point of beginning.

(2) *Norfolk Naval Shipyard Area.* Beginning at a point on the shore at the northeast corner of the Norfolk Naval Shipyard, at latitude 36°49′43.5″, longitude 76°17′41.5″; thence due east approximately 100 feet to the western boundary of Elizabeth River channel; thence in a southerly direction along the western boundary of the channel to the point where it passes through the draw of the Norfolk and Portsmouth Belt Line Railroad Bridge, thence in a southwesterly direction along the northerly side of the bridge to the western shore of Southern Branch of Elizabeth River; and thence along the shore in a northerly direction to the point of beginning.

(3) *Southgate Terminal Area.* Beginning at a point at the northeast corner of Southgate Terminal Annex of Norfolk Naval Shipyard, at latitude 36°48′23″, longitude 76°17′39″; thence east to latitude 36°48′23″, longitude 76°17′29″; thence southerly along the western boundary of Norfolk Harbor 35-foot channel to latitude 36°48′04″, longitude 76°17′33″; thence west to latitude 36°48′04″, longitude 76°17′41″; and thence along the shore in a northerly direction to the point of beginning.

(b) *The regulations.* (1) No vessels other than Naval vessels and other vessels authorized to move to and from piers at the Norfolk Naval Shipyard and its two annexes described in paragraph (a)(1) and (3) of this section, and no person other than persons embarked in such vessels, shall enter the restricted areas.

(2) This section shall be enforced by the Commander, Norfolk Naval Shipyard, Portsmouth, Va., and such agencies as he may designate.

[19 FR 2232, Apr. 17, 1954, as amended at 35 FR 2660, Feb. 6, 1970]

§ 207.155 Hampton Roads and Willoughby Bay off Norfolk Naval Base; navy restricted areas.

(a) *The areas.* (1) Beginning at a point on the shore at the Destroyer Submarine Piers at latitude 36°56′00″, longitude 76°19′30″; thence westerly to latitude 36°55′59″, longitude 76°20′08.5″; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°56′17.5″, longitude 76°20′07″; and thence easterly to a point on shore at latitude 36°56′19″, longitude 76°19′46.5″.

(2) Beginning at a point on the Naval Station shore at latitude 36°56′37.5″, longitude 76°19′44″; thence westerly and northerly along the breakwater to its extremity at latitude 36°56′41.5″, longitude 76°19′54″; thence westerly to a point on the eastern limit of Norfolk Harbor Channel at latitude 36°56′41.5″, longitude 76°20′05.5″, thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57′52″; longitude 76°20′00″, thence easterly to latitude 36°57′52″, longitude 76°19′35″; thence to latitude 36°57′47.7″, longitude 76°18′57″; thence southeasterly to latitude 36°57′26″, longitude 76°18′42″; thence easterly to latitude 36°57′26.2″, longitude 76°17′55.2″; thence southerly to latitude 36°57′05″; longitude 76°17′52″; thence southeasterly to latitude 36°56′56.2″; longitude 76°17′27″; thence northeasterly to latitude 36°57′10″, longitude 76°16′29″; and thence to the shoreline at latitude 36°57′18.8″, longitude 76°16′22″ at the Naval Air Station.

(b) *The regulations.* (1) No vessels other than Naval vessels and other vessels authorized to move to and from piers at the Norfolk Naval Base, and no person other than persons embarked in such vessels, shall enter the restricted areas.

(2) This section shall be enforced by the Commandant, Fifth Naval District, and such agencies as he may designate.

[24 FR 9287, Nov. 17, 1959, as amended at 29 FR 13970, Oct. 9, 1964; 35 FR 4552, Apr. 14, 1970]

§ 207.157 Chesapeake Bay, Lynnhaven Roads; navy amphibious training area.

(a) *The restricted area.* Beginning at latitude 36°55′47″, longitude 76°11′04.5″; thence to latitude 36°59′04″, longitude 76°10′11″; thence to latitude 36°58′28.5″, longitude 76°07′54″; thence to latitude 36°55′27.5″, longitude 76°08′42″; thence westerly along the shore and across

the mouth of Little Creek to the point of beginning.

(b) *The regulations.* (1) No fishpound stakes or structures shall be allowed in the restricted area.

(2) No vessel shall approach within 300 yards of any naval vessel or within 600 yards of any vessel displaying the red "baker" burgee.

(3) This section shall be enforced by the Commandant, Fifth Naval District, and such agencies as he may designate.

[13 FR 6920, Nov. 24, 1948, as amended at 22 FR 5956, July 27, 1957]

§ 207.158 Chesapeake Bay entrance; naval restricted area.

(a) *The area.* Beginning at a point on the south shore of Chesapeake Bay at longitude 76°03'06"; thence to latitude 37°01'18", longitude 76°02'06"; thence to latitude 37°00'18", longitude 75°55'54"; thence to latitude 36°58'00", longitude 75°48'24"; thence to latitude 36°51'48", longitude 75°51'00"; thence to the shore at longitude 75°58'48", and thence northwesterly and southwesterly along the shore at Cape Henry to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, crabbing, fishing, and dragging in the area are prohibited, and no object attached to a vessel or otherwise shall be placed on or near the bottom.

(2) This section shall be enforced by the Commandant, Fifth Naval District, Norfolk Va.

[18 FR 8159, D[illegible]. 12, 1953, as amended at 28 FR 349, Jan. 1 1963]

§ 207.160 All waterways tributary to the Atlantic Ocean south of Chesapeake Bay and all waterways tributary to the Gulf of Mexico east and south of St. Marks, Fla.; use, administration, and navigation.

(a) *Description.* This section applies to the following:

(1) *Waterways.* All navigable waters of the United States, natural or artificial, including bays, lakes, sounds, rivers, creeks, intracoastal waterways, as well as canals and channels of all types, which are tributary to or connected by other waterways with the Atlantic Ocean south of Chesapeake Bay or with the Gulf of Mexico east and south of St. Marks, Florida.

(2) *Locks.* All Government owned or operated locks and hurricane gate chambers and appurtenant structures in any of the waterways described in paragraph (a)(1) of this section.

(3) *United States property.* All river and harbor lands owned by the United States in or along the waterways described in paragraph (a)(1) of this section, including lock sites and all structures thereon, other sites for Government structures and for the accommodation and use of employees of the United States, and rights of way and spoil disposal areas to the extent of Federal interest therein.

(4) *Vessels and rafts.* The term "vessel" as used in this section includes all floating things moved over these waterways other than rafts.

(b) *Authority of District Engineers.* The use, administration, and navigation of these waterways, Federal locks and hurricane gate chambers shall be under the direction of the officers of the Corps of Engineers, United States Army, detailed in charge of the respective sections, and their authorized assistants. The cities in which the U.S. District Engineers are located are as follows:

U.S. District Engineer, Norfolk, Virginia.
U.S. District Engineer, Wilmington, North Carolina.
U.S. District Engineer, Charleston, South Carolina.
U.S. District Engineer, Savannah, Georgia.
U.S. District Engineer, Jacksonville, Florida.

(c) *Commercial statistics.* (1) As required by section 11 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), owners, agents, masters and clerks of vessels plying upon the waterways described in paragraph (a)(1) of this section shall submit a report on such activities for statistical purposes which most contain the following information:

(i) Name of vessel.

(ii) Name and address of owner or operator.

(iii) Type of vessel—steam, motor, sail, barge, or other type.

(iv) Net registered tonnage—if not registered, approximate net tonnage.

(v) Maximum draft at time of passage.

(vi) Number of passengers.

(vii) Cargo—by commodities, expressed in short tons, or other units by which such commodities are customarily measured, giving origin and destination.

(2) All persons rafting and towing logs shall submit a report of their activities containing such information as may be called for by the District Engineer concerned.

(3) The report should be presented to the lockmaster of the federally operated locks for each trip made. Where no federally operated lock is passed, they shall be mailed promptly to the District Engineer. On written request, persons or corporations making frequent use of these waterways may be granted permission to submit monthly statements in lieu of reports by trips. Reports may be submitted on forms furnished free of charge by the District Engineer.

(d) *Bridges.* (For regulations governing the operation of bridges, see §§ 117.1, 117.240 and 117.245 of this title.)

(e) *Locks*—(1) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock and lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants.

(2) *Signals.* Vessels desiring lockage in either direction shall give notice to the lockmaster at not more than three-quarters of a mile nor less than one-quarter of a mile from the lock, by two long and two short blasts of a whistle. When the lock is available, a green light, semaphore or flag will be displayed; when not available, a red light, semaphore or flag will be displayed. No vessels or rafts shall approach within 300 feet of any lock entrance unless signalled to do so by the lockmaster.

(3) *Precedence at locks.* (i) The vessel arriving first at a lock shall be first to lock through; but precedence shall be given to vessels belonging to the United States and to commercial vessels in the order named. Arrival posts or markers may be established ashore above or below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

(ii) The lockage of pleasure boats, house boats or like craft shall be expedited by locking them through with commercial craft (other than barges carrying petroleum products or highly hazardous materials) in order to utilize the capacity of the lock to its maximum. If, after the arrival of such craft, no separate or combined lockage can be accomplished within a reasonable time not to exceed the time required for three other lockages, then separate lockage shall be made.

(4) *Entrance to and exit from locks.* No vessel or raft shall enter or leave the locks before being signalled to do so. While waiting their turns, vessels or rafts must not obstruct traffic and must remain at a safe distance from the lock. They shall take position in rear of any vessels or rafts that may precede them, and there arrange the tow for locking in sections if necessary. Masters and pilots of vessels or in charge of rafts shall cause no undue delay in entering or leaving the lock, and will be held to a strict accountability that the approaches are not at any time unnecessarily obstructed by parts of a tow awaiting lockage or already passed through. They shall provide sufficient men to move through the lock promptly without damage to the structures. Vessels or tows that fail to enter the locks with reasonable promptness after being signalled to do so will lose their turn.

(5) *Lockage of vessels.* (i) Vessels must enter and leave the locks carefully at slow speed, must be provided with suitable lines and fenders, must

always use fenders to protect the walls and gates, and when locking at night must be provided with suitable lights and use them as directed.

(ii) Vessels which do not draw at least six inches less than the depth on miter sills or breast walls, or which have projections or sharp corners liable to damage gates or walls, shall not enter a lock or approaches.

(iii) No vessel having chains or lines either hanging over the sides or ends, or dragging on the bottom, for steering or other purposes, will be permitted to pass a lock or dam.

(iv) Power vessels must accompany tows through the locks when so directed by the lockmaster.

(v) No vessel whose cargo projects beyond its sides will be admitted to lockage.

(vi) Vessels in a sinking condition shall not enter a lock or approaches.

(vii) The passing of coal from flats or barges to steamers while in locks is prohibited.

(viii) Where special regulations for safeguarding human life and property are desirable for special situations, the same may be indicated by printed signs, and in such cases such signs will have the same force as other regulations in this section.

(ix) The lockmaster may refuse to lock vessels which, in his judgment, fail to comply with this paragraph.

(6) *Lockage of rafts.* Rafts shall be locked through in sections as directed by the lockmaster. No raft will be locked that is not constructed in accordance with the requirements stated in paragraph (g) of this section. The party in charge of a raft desiring lockage shall register with the lockmaster immediately upon arriving at the lock and receive instructions for locking.

(7) *Number of lockages.* Tows or rafts locking in sections will generally be allowed only two consecutive lockages if one or more single vessels are waiting for lockage, but may be allowed more in special cases. If tows or rafts are waiting above and below a lock for lockage, sections will be locked both ways alternately whenever practicable. When there are two or more tows or rafts awaiting lockage in the same direction, no part of one shall pass the lock until the whole of the one preceding it shall have passed.

(8) *Mooring.* (i) Vessels and rafts when in the lock shall be moored where directed by the lockmaster by bow, stern and spring lines to the snubbing posts or hooks provided for that purpose, and lines shall not be let go until signal is given for vessel or raft to leave. Tying boats to the lock ladders is prohibited.

(ii) The mooring of vessels or rafts near the approaches to locks except while waiting for lockage, or at other places in the pools where such mooring interferes with general navigation of the waterway is prohibited.

(9) *Maneuvering locks.* The lock gates, valves, and accessories will be moved only under the direction of the lockmaster; but if required, all vessels and rafts using the locks must furnish ample help on the lock walls for handling lines and maneuvering the various parts of the lock under the direction of the lockmaster.

(f) [Reserved]

(g) *Rafts, logging.* (1) Rafts will be permitted to navigate a waterway only if properly and securely assembled. The passage of "bag" or "sack" rafts, "dog" rafts, or of loose logs over any portion of a waterway, is prohibited. Each section of a raft will be secured within itself in such a manner as to prevent the sinking of any log, and so fastened or tied with chains or wire rope that it cannot be separated or bag out so as to materially change its shape. All dogs, chains and other means used in assembling rafts shall be in good condition and of ample size and strength to accomplish their purposes.

(2) No section of a raft will be permitted to be towed over any portion of a waterway unless the logs float sufficiently high in the water to make it evident that the section will not sink en route.

(3) Frequent inspections will be made by the person in charge of each raft to insure that all fastenings remain secure, and when any one is found to have loosened, it shall be repaired at once. Should any log or section be lost from a raft, the fact must be promptly reported to the District Engineer, giving as definitely as possi-

ble the exact point at which the loss occurred. In all cases the owner of the lost log or section will take steps immediately to remove the same from the waterway.

(4) The length and width of rafts shall not exceed such maximum dimensions as may be prescribed by the District Engineer.

(5) All rafts shall carry sufficient men to enable them to be managed properly, and to keep them from being an obstruction to other craft using the waterway. To permit safe passage in a narrow channel rafts will, if necessary, stop and tie up alongside the bank. Care must be exercised both in towing and mooring rafts to avoid the possibility of damage to aids to navigation maintained by the United States or under its authorization.

(6) When rafts are left for any reason with no one in attendance, they must be securely tied at each end and at as many intermediate points as may be necessary to keep the timbers from bagging into the stream, and must be moored so as to conform to the shape of the bank. Rafts moored to the bank shall have lights at 500-foot intervals along their entire length. Rafts must not be moored at prominent projections of the bank, or at critical sections.

(7) Logs may be stored in certain tributary streams provided a clear channel at least one-half the width of the channel be left clear for navigation along the tributary. Such storage spaces must be protected by booms and, if necessary to maintain an open channel, piling should also be used. Authority for placing these booms and piling must be obtained by written permit from the District Engineer.

(8) The building, assembling, or breaking up of a raft in a waterway will be permitted only upon special authority obtained from the District Engineer, and under such conditions as he may prescribe.

(h) *Dumping of refuse or oil in waterway, obstructions.* Attention is invited to the provisions of sections 13 and 20 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152, 1154; 33 U. S. C. 407, 415), and of sections 2, 3, and 4 of the Oil Pollution Act of June 7, 1924 (43 Stat. 604, 605; 33 U.S.C. 432-434), which prohibit the depositing of any refuse matter in these waterways or along their banks where liable to be washed into the waters; authorize the immediate removal or destruction of any sunken vessel, craft, raft, or other similar obstruction, which stops or endangers navigation; and prohibit the discharge of oil from vessels into the coastal navigable waters of the United States.

(i) *Damage.* Masters and owners of vessels using the waterways are responsible for any damage caused by their operations to canal revetments, lock piers and walls, bridges, hurricane gate chambers, spillways, or approaches thereto, or other Government structures, and for displacing or damaging of buoys, stakes, spars, range lights or other aids to navigation. Should any part of a revetment, lock, bridge, hurricane gate chamber, spillway or approach thereto, be damaged, they shall report the fact, and furnish a clear statement of how the damage occurred, to the nearest Government lockmaster or bridge tender, and by mail to the District Engineer, U.S. Engineer Office, in local charge of the waterway in which the damage occurred. Should any aid to navigation be damaged, they shall report that fact immediately to the Superintendent of Lighthouses at Norfolk, Virginia, if north of New River Inlet, North Carolina; to the Superintendent of Lighthouses at Charleston, South Carolina, if between New River Inlet, North Carolina, and St. Lucie Inlet, Florida; to the Superintendent of Lighthouses at Key West, Florida, if between St. Lucie Inlet and Suwanee River, Florida; and to the Superintendent of Lighthouses, New Orleans, Louisiana, if between Suwanee River and St. Marks, Florida.

(j) *Trespass on property of the United States.* Trespass on waterway property or injury to the banks, locks, bridges, piers, fences, trees, houses, shops or any other property of the United States pertaining to the waterway is strictly prohibited. No business, trading or landing of freight or baggage will be allowed on or over Government piers, bridges, or lock walls.

(k) *Copies of regulations.* Copies of the regulations in this section will be

furnished free of charge upon application to the nearest District Engineer.

[Regs., Apr. 30, 1938, as amended at 8 FR 15381, Nov. 9, 1943; 25 FR 8908, Sept. 16, 1960; 26 FR 353, Jan. 18, 1961; 34 FR 4967, Mar. 7, 1969; 42 FR 57961, Nov. 7, 1977]

§ 207.161 Cape Fear River, Navigation Locks, between 29 and 94 river miles north of Wilmington, North Carolina; use, administration and navigation.

(a) The owner of or agency controlling the locks shall be required to open the navigation locks upon demand for passage of vessels during the following hours and periods:

LOCK AND DAM NO. 1, LOCK AND DAM NO. 2, WM. O. HUSKE LOCK AND DAM

Apr. 1 through Oct. 31.	Monday through Friday.	7 a.m. to 11 a.m., 12 noon to 4 p.m. 5 p.m. to 8 p.m.
	Saturday and Sunday.	7 a.m. to 9 a.m., 6 p.m. to 8 p.m.
Nov. 1 through Mar. 31.	Monday through Friday.	8 a.m. to 11 a.m., 12 noon to 5 p.m.

In addition, lockages will be provided during other hours if prior requests are made 48 hours in advance to the District engineer, U.S. Army Engineer District, Wilmington, North Carolina.

(b) The owner of or agency controlling the locks shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Wilmington, North Carolina, at the locks indicating the nature of the regulations of this section.

[42 FR 15681, Mar. 23, 1977]

§ 207.164 Neuse River and tributaries at Marine Corps Air Station, Cherry Point, N.C.; restricted area.

(a) *The area.* That portion of Neuse River within 500 feet of the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, extending from the mouth of Hancock Creek to a point approximately 6,800 feet west of the mouth of Slocum Creek, and all waters of Hancock and Slocum Creeks and their tributaries within the boundaries of the reservation.

(b) *The regulations.* (1) Except in cases of extreme emergency, all vessels other than those operated by the United States Navy or Coast Guard are prohibited from entering this area without prior permission of the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding General, United States Marine Corps Air Station, Cherry Point, North Carolina, and such agencies as he may designate.

[16 FR 2578, Mar. 21, 1951]

§ 207.164a Cape Fear River and tributaries at Sunny Point Army Terminal, Brunswick County, North Carolina; restricted area.

(a) *The area.* That portion of Cape Fear River due west of the main ship channel extending from U.S. Coast Guard buoy No. 31A at the north approach channel to Sunny Point Army Terminal to U.S. Coast Guard buoy No. 23A at the south approach channel to Sunny Point Army Terminal and all waters of its tributaries therein.

(b) Except in cases of extreme emergency, vessels of any size or rafts other than those authorized by the Commander, Sunny Point Army Terminal, are prohibited from entering this area without prior permission of the enforcing agency.

(c) The regulations in this section shall be enforced by the Commander, Sunny Point Army Terminal, Southport, North Carolina, and such agencies as he may designate.

[22 FR 9432, Nov. 26, 1957]

§ 207.164b Cooper River and tributaries at Charleston, S.C.; restricted areas.

(a) *The areas.* (1) That portion of Cooper River beginning on the westerly shore at latitude 32°49′50″, longitude 79°56′10″; thence to latitude 32°49′54″, longitude 79°55′55″; thence to latitude 32°50′32″, longitude 79°55′55″; thence to latitude 32°51′01″, longitude 79°56′07″; thence to latitude 32°51′19″, longitude 79°57′05″; thence to latitude 32°51′33″, longitude 79°57′27″; thence to latitude 32°51′48.5″, longitude 79°57′41.5″;

thence to latitude 32°52'06", longitude 79°57'54"; thence to latitude 32°52'27", longitude 79°58'01"; thence to latitude 32°52'37", longitude 79°58'03"; and thence to the westerly shore at latitude 32°52'37", longitude 79°58'06".

(2) The reach of Shipyard Creek upstream from a line 300 feet from and parallel to the upstream limit of the improved Federal turning basin.

(3) That portion of the Cooper River beginning on the west channel edge at latitude 32°52'06", longitude 79°57'54"; thence to the easterly shore of the Cooper River at latitude 32°52'13", longitude 79°57'30"; thence proceeding along the easterly shore to latitude 32°51'37", longitude 79°56'38"; thence to latitude 32°51'19", longitude 79°57'05"; thence to latitude 32°51'33", longitude 79°57'27"; thence to latitude 32°51'48.5", longitude 79°57'41.5"; thence to latitude 32°52'06", longitude 79°57'54".

(4) That portion of Cooper River extending from the mouth of Goose Creek at Red Bank Landing, a distance of approximately 4.8 miles and the tributaries to Cooper River within the area enclosed by the following arcs and their intersections:

(i) Radius = 8255' center of radius latitude 32°55'45" N., longitude 79°45'23" W.

(ii) Radius = 3790' center of radius latitude 32°55'00" N., longitude 79°55'41" W.

(iii) Radius = 8255' center of radius latitude 32°55'41" N., longitude 79°56'15" W.

(iv) Radius = 8255' center of radius latitude 32°56'09" N., longitude 79°56'19" W.

(b) *The regulations.* (1) Unauthorized vessels and other watercraft shall not enter at any time the restricted areas described in paragraphs (a) (1) and (2) of this section.

(2) Vessels and other watercraft entering the restricted area described in paragraph (a)(3) of this section shall proceed at normal speed and under no circumstances anchor, fish, loiter, or photograph until clear of the restricted area.

(3) Vessels and other watercraft other than those authorized by the Commanding Officer, Naval Ammunition Depot, entering the restricted area described in paragraph (a)(4) of this section shall proceed at normal speed and under no circumstances anchor, fish, or loiter in any way until clear of the restricted area. The area will be marked with suitable warning signs.

(4) The regulation in paragraphs (b) (1) and (2) of this section shall be enforced by the Commanding Officer, Southeastern Division, Naval Facilities Engineering Command, U.S. Naval Base, Charleston, S.C., and such agencies as he may designate.

(5) The regulation in paragraph (b)(3) of this section shall be enforced by the Commanding Officer, Naval Ammunition Depot, Charleston, S.C., and such agencies as he may designate.

[43 FR 44840, Sept. 2, 1978]

§ 207.164c Cooper River and Charleston Harbor, South Carolina: restricted areas.

(a) *The restricted areas.* (1) Area No. 1 is that portion of the Cooper River beginning near the westerly shore north of Shipyard Creek at "a" Latitude 32°50'14", Longitude 79°56'11"; thence to "b" Latitude 32°50'14", Longitude 79°55'37"; thence to "c" Latitude 32°49'41", Longitude 79°55'37"; thence to "d" Latitude 32°49'41", Longitude 79°55'52"; thence to "e" Latitude 32°49'47", Longitude 79°56'09"; and thence returning to "a" Latitude 32°50'14", Longitude 79°56'11".

(2) Area No. 2 is that portion of the Cooper River beginning at a point west of Shutes Folly Island at "a" Latitude 32°46'27", Longitude 79°55'31"; thence to "b" Latitude 32°46'39", Longitude 79°55'11"; thence to "c" Latitude 32°46'39", Longitude 79°54'51"; thence to "d" Latitude 32°46'28", Longitude 79°54'47"; thence to "e" Latitude 32°46'17", Longitude 79°54'51"; thence to "f" Latitude 32°46'17", Longitude 79°55'11"; and thence returning to "a" Latitude 32°46'27", Longitude 79°55'31".

(b) *The regulations.* (1) There shall be no introduction of magnetic material or magneto-electric field sources with the area.

(2) Ships transiting the areas will proceed without delay and shall not,

except as noted below, lie to or anchor within the areas.

(i) Pleasure craft under 50 feet LOA will not normally be affected; however, such craft may be required to stand clear upon notification, in the event they are interfering with range operation.

(ii) Anchored commercial ships will be allowed to swing into the restricted area at the Shutes Folly Island site when the range is not in use. Shutes Folly Island Range usage will be indicated by range house display of the international DELTA signal flag.

(iii) This section shall be enforced by the Commandant, Sixth Naval District, Charleston, South Carolina, and such agencies as he may designate.

[42 FR 38177, July 27, 1977]

§ 207.165 St. Johns River, Fla., Ribault Bay; prohibited area.

(a) *The area.* All waters constituting the Turning Basin within the Naval Air Base Reservation, Mayport, Florida, and inclosed by a line bearing approximately 180° true from Ribault Channel Light 4 to the shore at a point connecting with the Naval Base boundary line fence.

(b) *The regulations.* (1) All vessels and craft except those operated by the United States Navy or Coast Guard are prohibited from entering this area except in cases of extreme emergency.

(2) This section shall be enforced by the Commander, United States Naval Air Station, Jacksonville, Florida, and such agencies as he may designate.

[14 FR 2609, May 18, 1949]

§ 207.167 U.S. Navy Fuel Depot Pier, St. Johns River, Jacksonville, Florida; restricted area.

(a) The area is described as:

(1) A line running at 238.5° true and paralleling the pier at 100 feet is extended from the eastern edge of the mooring platform #59 to the western edge of platform #65. From these points the boundaries are extended to the shoreline along lines running at 328.5°.

(2) The easterly waterward coordinate being:

30°23'58.0" N 81°37'15.0" W

(3) The westerly waterward coordinate being:

30°23'53.0" N 81°37'24.4" W

(b) The regulations. (1) The use of waters as previously described by private and/or commercial floating craft is prohibited with the exception of vessels that have been specifically authorized to do so by the Officer in Charge of the Navy Fuel Depot.

(2) This regulation shall be enforced by the Officer in Charge, U.S. Navy Fuel Depot, Jacksonville, Florida, and such agencies as the officer in charge may designate.

[44 FR 12192, Mar. 6, 1979, as amended at 45 FR 27755, Apr. 24, 1980]

§ 207.169 Oklawaha River, navigation lock and dam at Moss Bluff, Fla.; use, administration, and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7 a.m. to 7 p.m. during the period of February 15 through October 15 each year, and from 8 a.m. to 6 p.m. during the remaining months of the year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels. The hours of operation are based on local time.

(b) The owner of or agency controlling the lock shall place signs of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Fla., at each side of the lock indicating the nature of the regulations of this section.

[35 FR 10520, June 27, 1970, as amended at 38 FR 5468, Mar. 1, 1973]

§ 207.170 Federal Dam, Oklawaha River, Moss Bluff, Fla.; pool level.

(a) The level of the pool shall normally be maintained at elevation 56.5 feet above sea level: *Provided,* That the level of the pool may be raised to not exceeding 58.5 feet above sea level at such times as may be authorized in writing by the District Engineer, Jacksonville, Fla., and subject to such conditions as he may specify.

(b) When, in the opinion of the District Engineer, an emergency exists requiring the lowering of the pool level

to an elevation less than 56.5 above sea level either to safeguard the dikes or to increase the discharge from Lake Griffin in times of high water, the discharge past the dam shall be regulated in such manner as he may direct until he shall declare the emergency passed.

[Regs., Dec. 3, 1928]

§ 207.170a Eugene J. Burrell Navigation Lock in Haines Creek near Lisbon, Florida; use, administration and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7 a.m. to 12 noon, and from 1 p.m. to 7 p.m., during the period of February 15 through October 15 each year; and from 8 a.m. to 12 noon, and from 1 p.m. to 6 p.m., during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels.

(b) The owner of the lock shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations of this section.

[24 FR 1461, Feb. 27, 1959]

§ 207.170b Apopka-Beauclair Navigation Lock in Apopka-Beauclair Canal in Lake County, Florida; use, administration and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7:00 a.m. to 12:00 noon, and from 1:00 p.m. to 7:00 p.m., during the period of February 15 through October 15 each year; and from 8:00 a.m. to 12 noon, and from 1:00 p.m. to 6:00 p.m., during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels.

(b) The owner of the lock shall place signs, of such size and descriptions as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations.

[24 FR 5151, June 24, 1959]

§ 207.170c Kissimmee River, navigation locks between Lake Tohopekaliga and Lake Okeechobee, Fla.; use, administration and navigation.

(a) The owner of or agency controlling the locks shall be required to open the navigation locks upon demand for passage of vessels during the following hours and periods:

Locks S–61, S–65, and S–65E		
Monday through Friday...	All year	7:00 a.m. to 6:00 p.m.
Saturday and Sunday.....	Mar. 1 through Oct. 31.	5:30 a.m. to 7:30 p.m.
Do.....	Nov. 1 through Feb. 28.	5:30 a.m. to 6:30 p.m.
Lock S–65A		
Seven days a week.....	All year	8:00 a.m. to 5:00 p.m.
Locks S–65B, S–65C, and S–65D		
Monday through Friday...	All year	8:00 a.m. to 5:00 p.m.
Saturday and Sunday.....	Mar. 1 through Oct. 31.	5:30 a.m. to 7:30 p.m.
Do.....	Nov. 1 through Feb. 28.	5:30 a.m. to 6:30 p.m.

(b) The owner of or agency controlling the locks shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Florida, at each side of the locks indicating the nature of the regulations of this section.

[29 FR 2384; Feb. 12, 1964, as amended at 31 FR 7566, May 26, 1966; 33 FR 7626, May 23, 1968]

§ 207.170d Taylor Creek, navigation lock (S–193) across the entrance to Taylor Creek at Lake Okeechobee, Okeechobee, Fla.; use, administration and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 5:30 a.m. to 8:00 p.m. daily. During the above hours the lock shall be opened upon demand for the passage of vessels.

(b) The owner of the lock shall place signs, of such size and description as may be designated by the District En-

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gineer, U.S. Army Engineer District, Jacksonville, Florida at each side of this lock indicating the nature of the regulations of this section.

[Regs., July 17, 1973, 1522-01 (Taylor Creek, Fla.) DAEN-CWO-N]

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[38 FR 21404, Aug. 8, 1973]

§ 207.171 Canaveral Harbor adjacent to the Navy pier at Port Canaveral, Fla.; restricted area.

(a) *The area.* The waters of Canaveral Harbor within a line circumscribing the water approaches to the Navy pier along the northeasterly edge of the Canaveral Harbor turning basin at a distance of 200 feet from all portions of the pier including the dolphins 200 feet off the northwest end and 75 feet off the southeast end of the pier.

(b) *The regulations.* (1) All unauthorized vessels and personnel are prohibited from the area during specified periods.

(2) The area will be closed when a red ball is shown by day or red flashing lights are displayed by night from the southwest side of the Port Canaveral water tower. The red lights will be shielded to seaward.

(3) Lighted signs indicating the restricted area will be placed on the pier and adjacent thereto.

(4) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Ordnance Test Unit, AFMTC, Patrick Air Force Base, Florida.

[25 FR 12244, Nov. 30, 1960]

§ 207.171a Banana River at Cape Canaveral Missile Test Annex, Fla.; prohibited area.

(a) *The area.* The waters within a semicircle with a radius of 10,000 feet centered on the easterly shore of Banana River at Cape Canaveral at latitude 28°27′23″, longitude 80°35′48″.

(b) *The regulations.* (1) All unauthorized craft shall stay clear of the area at all times.

(2) The regulations in this section shall be enforced by the Commander, Air Force Missile Test Center, Patrick Air Force Base, Florida, and such agencies as he may designate.

[26 FR 6646, July 26, 1961]

§ 207.171b Banana River at Cape Canaveral Air Force Station, Fla., restricted area.

(a) *The Area.* (1) Starting at the northern boundary of the existing Prohibited Area as described in 33 CFR 207.171a, and the shoreline at latitude 28°28′58″N; Longitude 80°35′26″W; thence westerly along the northern boundary of 207.171a to latitude 28°28′58″N, longitude 80°35′43″W; thence N 04°06′25″E for 4760.11 feet to latitude 28°29′45″N, longitude 80°35′39″W; thence due east to a point on the shoreline at latitude 28°29′45″N, longitude 80°35′11″W.

(b) *The Regulation.* (1) All unauthorized craft shall stay clear of this area at all times.

(2) The regulations in this section shall be enforced by the Commander, Eastern Space and Missile Center, Patrick Air Force Base, Florida, and such agencies as he may designate.

[45 FR 76144, Nov. 18, 1980]

§ 207.171c [Reserved]

§ 207.171d Banana River at Patrick Air Force Base, Fla.; prohibited area.

(a) *The area.* The water area within a semicircle with a radius of 600 feet having its center at latitude 28°14′14.1″, longitude 80°36′54.7″ near the easterly shore of Banana River. The offshore boundary will be marked with appropriate warning signs.

(b) *The regulations.* (1) All unauthorized watercraft shall stay clear of the area at all times.

(2) The regulations in this section shall be enforced by the Commander, Air Force Missile Test Center, Patrick Air Force Base, Florida, and such agencies as he may designate.

[29 FR 3702, Mar. 25, 1964]

§ 207.171e Banana River near Orsino, Fla.; restricted area.

(a) *The area.* That part of Banana River N of the NASA Banana River Causeway near Orsino and extending above the head of said river to the N and westerly to Kennedy Parkway North.

(b) *The regulations.* (1) All unauthorized craft and personnel shall stay clear of the area at all times.

(2) The regulations in this section shall be enforced by the Director, John F. Kennedy Space Center, NASA, Cocoa Beach, Fla.

[30 FR 8831, July 14, 1965]

§ 207.171f Atlantic Ocean near Port Everglades, Fla.; naval restricted area.

(a) *The area.* An area bounded on the east by longitude 80°03'30", on the south by latitude 26°03'00", on the west by the beach south of Port Everglades Entrance Channel and a line extended northeasterly on the alinement of the beach to a point on the southerly limit of the entrance channel, and on the north by the southerly limit of said entrance channel and its easterly prolongation to longitude 80°03'30".

(b) *The regulations.* (1) Anchoring of ocean-going vessels or any vessel with draft in excess of 12 feet shall be prohibited in the area.

(2) The regulations of this section shall be enforced by the Officer-in-Charge, U.S. Naval Ordnance Laboratory Testing Facility, Ft. Lauderdale, Fla., and such agencies as he may designate.

[22 FR 4386, June 21, 1957, as amended at 24 FR 1568, Mar. 3, 1959; 25 FR 12244, Nov. 30, 1960; 26 FR 6646, July 26, 1961; 28 FR 4842, May 5, 1963; 29 FR 3702, Mar. 25, 1964; 30 FR 8831, July 14, 1965]

§ 207.173 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted area.

(a) *The areas.* (1) All waters within 100 yards of the Harry S Truman Annex beginning at a point on the shore at latitude 24°32'45.3" N., longitude 81°47'51" W.; thence to a point 100 yards due south of the south end of Whitehead Street at latitude 24°32'42.3" N., longitude 81°47'51" W., and extending westerly paralleling the south shoreline of Harry S Truman Annex to latitude 24°32'37.6" N., longitude 81°48'32" W., and thence to the shore at latitude 24°32'41" N., longitude 81°48'31" W. (Area 1).

(2) All waters within 100 yards of the Coast Guard Station and the westerly end of Trumbo Point Annex beginning at the shore at latitude 24°33'47.6" N., longitude 81°47'55.6" W.; thence westerly to latitude 24°33'48" N., longitude 81°48'00.9" W.; thence southerly to latitude 24°33'45.8" N., longitude 81°48'00.9" W., thence westerly to latitude 24°33'47" N., longitude 81°48'12" W.; thence northerly to latitude 24°34'00.6" N., longitude 81°48'10.6" W.; thence easterly to the bulkhead which forms the easterly end of slip between the Coast Guard Station and Pier D-3 at latitude 24°33'59.2" N., longitude 81°47'59.1" W. (Area 2).

(3) All water within 100 yards of Fleming Key (Area 3).

(4) All waters within 100 yards of a portion of the north shore of Trumbo Point Annex beginning at the shore at latitude 24°33'58" N., longitude 81°47'41.5" W.; thence northeasterly to latitude 24°34'00.9" N., longitude 81°47'37.7" W.; thence southeasterly to latitude 24°33'57.6" N., longitude 81°47'20" W.; thence southerly to the shore at latitude 24°33'54.7" N., and longitude 81°47'20.9" W. (Area 4).

(5) All waters within 100 yards of a portion of the southwest shore of the Naval Air Station and Boca Chica Key between a point at latitude 24°33'24" N., and longitude 81°42'30" W., and a point at latitude 24°33'54" N., and longitude 81°42'56" W. (Area 5).

(b) *The regulations.* (1) Entering or crossing any of the restricted areas described in paragraph (a) of this section is prohibited except as follows: Privately owned vessels properly registered and bearing identification in accordance with Federal and/or State laws and regulations, and at night showing lights required by Federal laws and Coast Guard regulations or, if no constant lights are required, then a bright white light showing all around the horizon, may transit the following portion of the restricted areas:

(i) The channel about 75 yards in width extending from the northwest corner of a pier formerly identified as "Pier D-3 of Trumbo Point Annex" eastward beneath the Fleming Key Bridge along the north shore of Trumbo Point Annex.

(ii) A channel 150 feet in width which extends easterly from the main

ship channel into Key West Bight, the northerly edge of which passes 25 feet south of the Trumbo Point Annex piers on the north side of the bight. While legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited to moor, anchor, or fish within 50 feet of any U.S. Government owned pier or craft.

(2) Stopping or landing by other than Government owned vessels and certain specifically authorized private craft in any of the restricted areas described in paragraph (a)(4) of this section is prohibited.

(3) Vessels using the restricted channel areas described in paragraph (b)(1)(i) and (ii) of this section shall proceed at speeds commensurate with minimum wake.

(4) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Key West, Florida, and such agencies as he may designate.

[45 FR 2317, Jan. 11, 1980]

§ 207.175a Carlson's Landing Dam navigation lock, Withlacoochee River, Fla.; use, administration and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7 a.m. to 12 noon, and from 1 p.m. to 7 p.m., during the period of February 15 through October 15 each year; and from 8 a.m. to 12 noon, and from 1 p.m. to 6 p.m., during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels.

(b) The owner of or agency controlling the lock shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Fla., at each side of the lock indicating the nature of the regulations in this section.

[30 FR 6161, May 1, 1965]

§ 207.175b Weekley Bayou, an arm of Boggy Bayou, Fla., at Eglin Air Force Base; restricted area.

(a) *The area.* All waters of Weekley Bayou west of a line drawn between latitude 30°28′57″, longitude 86°29′03″, and latitude 30°28′58″, longitude 86°29′06″, said line crossing the Bayou approximately 225 yards above its mouth.

(b) *The regulations.* (1) No vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his authorized representative.

(2) The regulations in this section shall be enforced by the Commander, Eglin Air Force Base, Florida, or such agencies as he may designate.

[25 FR 8379, Sept. 1, 1960. Redesignated at 30 FR 6161, May 1, 1965]

§ 207.175c Ben's Lake, a tributary of Choctawhatchee Bay, Fla., at Eglin Air Force Base; restricted area.

(a) *The area.* All waters of Ben's Lake including the channel connecting it with Choctawhatchee Bay.

(b) *The regulations.* (1) No vessel shall enter the area or navigate therein, without the permission of the Commander, Eglin Air Force Base, Florida, or his authorized representative.

(2) These regulations shall be enforced by the Commander, Eglin Air Force Base, Florida, or such agencies as he may designate.

[28 FR 1541, Feb. 19, 1963, as amended at 30 FR 6161, May 1, 1965]

§ 207.175d Alligator Bayou, a tributary of St. Andrew Bay, Florida; restricted area.

(a) *The area.* All waters of Alligator Bayou from a line connecting points of latitude 30°10′21″, longitude 85°45′07″ and latitude 30°10′16″, longitude 85°45′04″ to State Road 392.

(b) *The regulation.* (1) No vessel shall enter the area or navigate therein without permission of the Commanding Officer, Naval Ship Research and Development Laboratory, Panama City, Fla., or his authorized representative.

(2) The regulation of this section shall be enforced by the Commanding Officer, Naval Ship Research and Development Laboratory, Panama City, Fla., or such agencies as he may designate.

[36 FR 5219, Mar. 18, 1971, as amended at 36 FR 12213, June 29, 1971]

§ 207.175e Gulf of Mexico and St. Andrew Sound, south of East Bay, Florida, Tyndall Drone Launch Corridor, Tyndall Air Force Base, Florida; restricted area.

(a) *The area.* The waters of the Gulf of Mexico and St. Andrew Sound within an area described as follows, including Crooked Island: Beginning at a point on shore at latitude 30°01′30″, longitude 85°32′30″, thence to latitude 30°00′58″, longitude 85°33′38″, thence to latitude 29°56′38″, longitude 85°33′38″, thence to latitude 29°55′15″, longitude 85°31′21″, thence to a point on shore at latitude 30°00′58″, longitude 85°31′21″, thence northwest to the point of beginning. This area will be referred to as the "Tyndall Drone Launch Corridor."

(b) *The regulations.* (1) Military usage of areas is Monday through Friday between the hours of 7 a.m. and 5 p.m.

(2) Vessels are allowed to enter and remain in this area provided they have operational communication equipment capable of monitoring VHF Marine frequency Channel 16, (156.80 MHz). In the event the Marine radio equipment is not installed on the vessel, CB equipment with Channel 13 (27.115 MHz) will be used as an alternate means of communications. Warnings will be broadcast by the Air Force on Channel 16 (156.80 MHz) and Channel 13 (27.115 MHz) using the following sequence:

(i) Announcement 90 minutes prior to drone launch.

(ii) Announcement 60 minutes prior to drone launch.

(iii) Announcement of drone launch or drone cancelled, and the expected time of the drone launch. Upon receipt of the drone warning on either Channel 16 (156.80 MHz) or Channel 13 (27.115 MHz), vessels will take the necessary action to vacate the drone launch corridor not later than 60 minutes prior to expected drone launch.

(3) Vessels are authorized direct movement without stopping through this area at any time unless warned by helicopter or patrol boat.

(4) The area will be patrolled by helicopter/vessels during periods of hazardous military activity. Verbal warnings or instructions issued by these craft will be strictly adhered to.

(5) The regulations in this section shall be enforced by the Commanding Officer, Tyndall Air Force Base, Florida, and such agencies as he may designate.

[Regs, January 31, 1975, 1522-01 Gulf of Mexico and St. Andrew Sound, Fla.—DAEN-CWO-N]

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[40 FR 8949, Mar. 4, 1975; 40 FR 10988, Mar. 10, 1975]

§ 207.176 Pensacola Bay, Fla.; seaplane restricted area.

(a) *The area.* Beginning at latitude 30°22′28″, longitude 87°16′00″; thence to latitude 30°21′02″, longitude 87°14′20″; thence to latitude 30°20′02″, longitude 87°15′16″; thence to latitude 30°20′11″; longitude 87°17′58″; and thence to 272° true to the shore.

(b) *The regulations.* (1) This area is established as a naval seaplane landing area.

(2) Vessels and small craft, except crash boats, plane rearming boats, and similar craft ordered into the area on specific missions in connection with the servicing of planes or patrol of the area, are prohibited from entering or being in the area at any time.

(3) The regulations in this section shall be enforced by the Chief of Naval Air Basic Training, U.S. Naval Air Station, Pensacola, Fla., and such agencies as he may designate.

[13 FR 9561, Dec. 31, 1948, as amended at 25 FR 2666, Mar. 30, 1960; 28 FR 349, Jan. 12, 1963]

§ 207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration, and navigation.

(a) The regulations in this section shall apply to:

(1) *Waterways.* All navigable waters of the U.S. tributary to or connected by other waterways with the Gulf of Mexico between St. Marks, Fla., and

the Rio Grande, Tex. (both inclusive), and the Gulf Intracoastal Waterway; except the Mississippi River, its tributaries, South and Southwest Passes, and the Atchafalaya River above its junction with the Morgan City-Port Allen Route.

(2) *Locks and floodgates.* All locks, floodgates, and appurtenant structures in the waterways described in paragraph (a)(1) of this section.

(3) *Bridges, wharves, and other structures.* All bridges, wharves, and other structures in or over these waterways.

(4) *Vessels.* The term "vessels" as used in this section includes all floating craft other than rafts.

(5) *Rafts.* The term "raft" as used in this section includes any and all types of assemblages of floating logs or timber fastened together for support or conveyance.

(b) Authority of District Engineers. The use, administration, and navigation of the waterways and structures to which this section applies shall be under the direction of the officers of the Corps of Engineers, U.S. Army, in charge of the respective districts, and their authorized assistants. The location of these Engineer Districts, and the limits of their jurisdiction, are as follows:

(1) *U.S. District Engineer, Mobile, Ala.* The St. Marks River, Fla., to and including the Pearl River, Mississippi and Louisiana; and the Gulf Intracoastal Waterway from Apalachee Bay, Fla., to mile 36.4 east of Harvey Lock.

(2) *U.S. District Engineer, New Orleans, La.* From Pearl River, Mississippi and Louisiana, to Sabine River, Louisiana and Texas; and the Gulf Intracoastal Waterway from mile 36.4 east of Harvey Lock, to mile 266 west of Harvey Lock.

(3) *U.S. District Engineer, Galveston, Tex.* The Sabine River, Louisiana and Texas, to the Rio Grande, Tex.; and the Gulf Intracoastal Waterway from mile 266 west of Harvey Lock, to Brownsville, Tex.

(c) Commercial statistics. Owners, agents, masters, or clerks of vessels using the waterways to which this section applies shall submit a report on vessel movements and the cargo carried. The report is required by section 11 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555). The required information may be submitted on ENG Forms 3925 and 3925B. These forms will be furnished free of charge to the operators by any of the U.S. Engineer Districts listed in paragraph (b) of this section. If the operators choose not to submit the required information on these forms, they should contact the District Engineers to determine the information required.

(d) Locks and floodgates. (1) The term "lock" as used in this section shall include locks, floodgates, and appurtenant structures, and the area designated as the lock area including the lock approach channels.

(2) *Authority of lockmasters.* The term "lockmaster" as used in this section means the official in charge of operating a lock or floodgate. The lockmaster is responsible for the immediate management and control of the lock and lock area and for the enforcement of all laws, rules, and regulations for the use of the lock. He is authorized to give all necessary and appropriate orders and instructions to every person in the lock area, whether navigating the lock or not; and no one shall cause any movement of any vessel within the lock area unless instructed to do so by the lockmaster or his duly authorized assistants. The lockmaster may refuse passage through the lock to any vessel which, in his judgment, fails to comply with the regulations of this section.

(3) *Sound signals.* Vessels desiring passage through a lock shall notify the lockmaster by three long and distinct blasts of a horn, whistle, or calls through a megaphone, when within a reasonable distance from the lock. When the lock is ready for entrance, the lockmaster shall reply with three long blasts of a horn, whistle, or calls through a megaphone. When the lock is not ready for entrance, the lockmaster shall reply by four or more short, distinct blasts of a horn, whistle, or calls through a megaphone (danger signal). Permission to leave the lock shall be indicated by the lockmaster by one long blast.

(4) *Visual signals.* Signal lights and discs shall be displayed at all locks as follows:

(i) *From sunset to sunrise.* One green light shall indicate the lock is open to approaching navigation; one red light shall indicate the lock is closed to approaching navigation.

(ii) *From sunrise to sunset.* Large discs, identical in color and number to the light signals prescribed in paragraph (d)(4)(i) of this section will be displayed from a mast on or near the lock wall.

(5) *Radiophone.* Locks will monitor continuously VHF-Channel 16 ("Safety and Calling" Channel) and/or AM-2738 kHz for initial communication with vessels. Upon arrival at a lock, a vessel equipped with a radiophone will immediately advise the lock by radio of its arrival so that the vessel may be placed on proper turn. Information transmitted or received in these communications shall in no way affect the requirements for use of sound signals or display of visual signals, as provided in paragraphs (d)(3) and (4) of this section.

(6) *Precedence at locks.* The order of precedence for locking is:

(i) U.S. Government vessels, passenger vessels, commercial vessels, rafts, and pleasure craft.

(ii) The vessel arriving first at a lock will be locked through first. When vessels approach simultaneously from opposite directions, the vessel approaching at the same elevation as the water in the lock chamber will be locked through first. In order to achieve the most efficient utilization of the lock, the lockmaster is authorized to depart from the normal order of locking precedence, stated in paragraph (d)(6)(i) of this section, as in his judgment is warranted.

(iii) The lockage of pleasure boats, houseboats, or like craft may be expedited by locking them through with commercial craft (other than vessels carrying dangerous cargoes, as described in 46 CFR Part 146). If, after the arrival of such craft, no combined lockage can be made within reasonable time, not to exceed three other lockages, then separate lockage shall be made.

(7) *Entrance to and exits from locks.* No vessel or tow shall enter or exit from a lock before being signaled to do so. While awaiting turn, vessels or tows must not obstruct navigation and must remain at a safe distance from the lock, taking position to the rear of any vessel or tows that precede them; and rearranging the tow for locking in sections, if necessary. Masters and pilots of vessels or tows shall enter or exit from a lock with reasonable promptness after receiving the proper signal. Appropriate action will be taken to insure that the lock approaches are not obstructed by sections of a tow either awaiting lockage or already locked through. Masters of vessels shall provide sufficient men to assist in the locking operation when deemed necessary by the lockmaster. Care shall be taken to insure prompt and safe passage of the vessel without damage to the structure.

(8) *Lockage and passage of vessels.* Vessels or tows shall enter and exit from locks under sufficient control to prevent damage to the lock, gates, guide walls, fenders, or other parts of the structure. Vessels shall be equipped with and use suitable fenders and adequate lines to protect the lock and to insure safe mooring during the locking operation. Vessels shall not meet or pass anywhere between the gate walls or fender system or in the approaches to locks.

(9) *Vessels prohibited from locks.* The following vessels shall not be permitted to enter locks or approach channels:

(i) Vessels in a sinking condition.

(ii) Vessels leaking or spilling cargo.

(iii) Vessels not having a draft of at least three (3) inches less than the depth over the sills or breast walls.

(iv) Vessels having projection or cargo loaded in such a manner that is liable to damage the structure.

(v) Vessels having chains, links, or drags either hanging over the sides or ends or dragging on the bottom for steering or other purposes.

(vi) Vessels containing flammable or dangerous cargo must have the hatch covers in place and securely fastened.

(10) *Number of lockages.* Tows locking in sections will generally be allowed only two consecutive lockages if

other vessels are waiting for lockage unless otherwise decided by the lockmaster. If other tows are waiting above and below a lock, lockages will be made both ways alternately whenever practicable.

(11) *Mooring in locks.* (i) When in a lock, vessels and tows shall be moored where directed by the lockmaster by bow, stern, and spring lines to the snubbing posts or hooks provided for that purpose, and lines shall not be let go until the signal is given for the vessel to exit. Tying to the lock ladders is prohibited.

(ii) Mooring near the approaches to locks is prohibited except when the vessels or tows are awaiting lockage.

(12) *Lock operating personnel.* Vessels and tows using the locks may be required to furnish personnel to assist in locking through; however, the operation of the structure is the responsibility of the lockmaster, and personnel assisting in the lockage of the vessels and tows will follow the direction of the appropriate official on duty at the lock. No gates, valves or other accessories or controls will be operated unless under his direction.

(13) *Waterway traffic data.* To meet requirements for current data on waterway traffic and the trend of such traffic, all vessels transiting locks shall furnish such information as prescribed by the District Engineer. ENG Form 3102 for submitting this data can be obtained at any Federally operated lock.

(14) *Lockage of rafts.* Rafts shall be locked through as directed by the lockmaster. No raft will be locked that is not constructed in accordance with the requirements stated in paragraph (f) of this section. The person in charge of a raft desiring lockage shall register with the lockmaster immediately upon arriving at the lock and receive instructions for locking.

(e) Waterways.

(1)—(4) [Reserved]

(5)(i) [Reserved]

(ii) Algiers Canal between the Mississippi River and Bayou Barataria, La., and on Harvey Canal, Gulf Intracoastal Waterway, mile 0 to mile 6 WHL, tows 74 feet in width will be allowed. Tows in excess of 55 feet wide desiring to move over Algiers Canal or Harvey Canal will obtain clearance from the lockmaster at Algiers Lock or Harvey Lock, respectively, before entering the canal. Overwidth tows will report clearing Algiers or Harvey Canal to the respective lockmaster and will rearrange tows to conform to prescribed dimensions immediately upon leaving the canal. The lockmaster will withhold permission for additional tows over 55 feet wide until all previously authorized tows moving in the opposite direction have cleared the waterway.

(iii)—(vi) [Reserved]

(vii) Vessels or tows shall not navigate through a drawbridge until the movable span is fully opened.

(6) *Projections from vessels.* Vessels or tows carrying a deck load which overhangs or projects over the side, or whose rigging projects over the side, so as to endanger passing vessels, wharves, or other property, shall not enter or pass through any of the narrow parts of the waterway without prior approval of the District Engineer.

(7) *Meeting and passing.* Passing vessels shall give the proper signals and pass in accordance with the Federal Rules of the Road. At certain intersections where strong currents may be encountered, sailing directions may be issued through navigation bulletins or signs posted on each side of the intersection.

(f) Rafts. The navigation regulations in this paragraph shall apply fully to the movement of rafts.

(1) Rafts will be permitted to navigate a waterway only if properly and securely assembled. Each raft shall be so secured as to prevent the loss or sinking of logs.

(2) All rafts shall carry sufficient men to enable them to be managed properly. It will be the responsibility of the owner to remove logs from the waterway that have broken loose from the raft.

(3) Building, assembling, or breaking up of a raft within a waterway may be permitted; however, the work must be done in an area that will not restrict the use of the waterway by other users. The work area must be cleared of loose logs so that they will not

enter the waterway and become a hazard to navigation.

(g) Damage. Should any damage be done to a revetment, lock, floodgates, bridge, or other federally owned or operated structure, the master of the vessel shall report the accident to the nearest lockmaster or bridgetender as soon as possible after the accident. Damage to aids to navigation and to nonfederally owned bridges must be reported to the Commander, Eighth Coast Guard District, New Orleans, La.

(h) Marine accidents. Masters, mates, pilots, owners, or other persons using the waterways covered by this section shall report to the District Engineer at the earliest possible date any accident on the waterway which causes any vessel to become an obstruction to navigation. The information to be furnished the District Engineer shall include the name of the vessel, its location, and the name and address of the owner. The owner of a sunken vessel shall properly mark the vessel as soon as practicable after sinking.

(i) Trespass on U.S. property. (1) Trespass on or injury to waterway property of the United States is prohibited. No business, trading, or landing of freight, will be allowed on Government property without permission of the District Engineer.

(2) The District Engineer may establish policy pertaining to mooring, exchanging crews, loading and unloading supplies, and making emergency repairs in the vicinity of locks so long as navigation is not impeded thereby.

(j) Liability. The regulations of this section will not affect the liability of the owners and operators of vessels for any damage caused by their operations to the waterway or to the structures therein.

[36 FR 8866, May 14, 1971, as amended at 37 FR 26419, Dec. 12, 1972; 42 FR 57961, Nov. 7, 1977]

§ 207.184 Sabine River at Orange, Tex.; restricted area in vicinity of the Naval and Marine Corps Reserve Center.

(a) *The area.* The berthing area of the Naval and Marine Corps Reserve Center and the waters adjacent thereto from the mean high tide shoreline to a line drawn parallel to, and 100 feet channelward from lines connecting the pier head of Pier 10 and from a line drawn parallel to, and 200 feet upstream from, Pier 10 to a line drawn parallel to, and 100 feet downstream from Pier 10.

(b) *The regulations.* (1) No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commanding Officer, Naval and Marine Corps Reserve Center, Orange, Texas, shall navigate, anchor, or moor in the restricted area.

(2) The regulations of this section shall be enforced by the Commanding Officer, Naval and Marine Corps Reserve Center, Orange, Texas, and such agencies as he may designate.

[44 FR 42968, July 23, 1979]

§ 207.185 Taylors Bayou, Tex., Beaumont Navigation District Lock; use, administration and navigation.

(a) Between March 15 and September 15 each year, pleasure boats, houseboats, and other craft not employed for commercial purposes, will be locked through only at 6:00 and 11:45 a.m., and 6:30 p.m., except in cases of emergency; but whenever a lockage is made for a commercial boat, other craft may likewise pass through if there is room in the lock. At all other times lockages shall be made in accordance with § 207.180.

(b) The lock tender or one in charge of the lock shall be the judge as to whether the boat presenting itself for lockage is a commercial or pleasure boat.

[4 FR 1719, Apr. 29, 1939]

§ 207.187 Gulf Intracoastal Waterway, Tex.; special floodgate, lock and navigation regulations.

(a) *Application.* The regulations in this section shall apply to the operation of the Brazos River Floodgates and the Colorado River Locks at Mile 400.8 and Mile 441.5, respectively, west of Harvey Lock, La., on the Gulf Intracoastal Waterway, and navigation of the tributary Colorado River Channel in the vicinity of said locks.

(b) *Definitions.* The term "current" means the velocity of flow of water in the river. It is expressed in statute miles per hour. The term "head differential" means the difference measured in feet between the water level in the river and that in the waterway when the floodgates or lock gates are closed. The term "Lockmaster" means the official in charge of the floodgates or locks.

(c) *Operation of floodgates and locks*—(1) *Unlimited passage.* The floodgates and locks shall be opened for the passage of single vessels and towboats with single or multiple barges when the current in the river is less than 1.5 miles per hour and the head differential is less than 0.7 foot. When the head differential is less than 0.7 foot, the Colorado River Locks shall normally be operated as floodgates, using only the riverside gate of each lock.

(2) *Limited passage.* When the current in either river exceeds 1.5 miles per hour or the head differential at the Brazos River Floodgates is between the limits of 0.7 foot and 1.8 feet, both inclusive, passage shall be afforded only for single vessels or towboats with single barges. When two barges are rigidly assembled abreast of each other and the combined width of both together is 55 feet or less, they shall be considered as one barge. Each section of an integrated barge shall be considered as one barge except, when it is necessary to attach a rake section to a single intermediate section to facilitate passage, the two sections shall be considered as one barge. It shall be the responsibility of the master, pilot or other person in charge of a vessel to determine whether a safe passage can be effected, giving due consideration to the vessel's power and maneuverability, and the prevailing current velocity, head differential, weather and visibility. If conditions are not favorable, passage shall be delayed until conditions improve and a safe crossing is assured.

(3) *Gate closures.* The Brazos River Floodgates shall be closed to navigation when the head differential exceeds 1.8 feet. The Colorado River Locks shall be closed to navigation when the current in the river exceeds a critical velocity as determined by the District Engineer, U.S. Army Engineer District, Galveston, Tex. The Brazos River Floodgates or the Colorado River Locks shall be closed to navigation when in the opinion of said District Engineer it is required for the protection of life and property, or it is to the advantage of the Government to permit uninterrupted emergency or maintenance operations, including dredging.

(4) *Mooring facilities.* Mooring facilities located on both banks of the Gulf Intracoastal Waterway on the approaches to the floodgates and locks are for the mooring of vessels when the floodgates or locks are closed to navigation or tows are limited to single barges. Vessels awaiting passage shall be moored parallel to the bank and as close to the bank as possible. Barges shall be moored fore and aft with two lines, each to a separate mooring facility. Beaching of vessels in lieu of mooring them is prohibited. The mooring facilities are numbered and vessels making fast to them shall notify the Lockmaster giving the number of each facility being used.

(5) [Reserved]

(6) *Communication*—(i) *Radio.* The floodgates and locks are equipped with short wave radio equipment transmitting and receiving on 2738 kilocycles. Call letters for the floodgates are WUI 411 and for the locks are WUI 412.

(ii) *Telephone.* The floodgates and locks are equipped with telephone facilities. The floodgates may be reached by phoning Freeport, Tex., Area Code 713, phone 233-1251; the locks may be reached by phoning Bay City, Tex., Area Code 713, phone 863-7842.

(7) *Arrival posts.* Arrival posts 10 feet high and 10 inches in diameter have been established on the approaches to the locks and floodgates. They are painted with alternate horizontal bands of red and white 3 inches wide. Arrival at the floodgates or locks shall be determined as provided in paragraph (d)(4) of § 207.180.

(d) *Navigation of the Colorado River Channel*—(1) *Traffic signals.* (i) Light and sound signals directed both upstream and downstream on the Colorado River are mounted on top of a gal-

vanized skeleton steel tower 85 feet high located on the northeast point of land at the Gulf Intracoastal Waterway crossing of the river. They will be operated from the control house of the East Lock of the Colorado River Locks to direct the interchange of traffic in the Colorado River and the Gulf Intracoastal Waterway.

(ii) Vessels navigating the Colorado River and desiring passage either upstream or downstream through the crossing, or into the crossing and through a lock into the Gulf Intracoastal Waterway, shall give notice to the Lockmaster by two long and distinct blasts of a whistle or horn when within a distance of not more than one-half mile nor less than one-fourth mile from the Gulf Intracoastal Waterway crossing. When the locks and the crossing are clear of vessels, the Lockmaster shall reply by two long and distinct blasts of a whistle or horn and display a green light from the signal tower indicating that the vessel in the river may proceed across the crossing or into the main stem of the Gulf Intracoastal Waterway either eastbound or westbound. When there are vessels in the river crossing or in the locks, the Lockmaster shall reply by four or more short blasts of a whistle or horn (danger signal) and display a red light from the signal tower indicating the vessel in the river shall wait at least a quarter of a mile from the crossing for clearance. When the locks and crossing are clear of vessels, the lockmaster shall indicate to the waiting vessel by two long and distinct blasts of a whistle or horn and display of a green light from the signal tower indicating that the vessel may proceed across the crossing or into the main stem of the Gulf Intracoastal Waterway either eastbound or westbound. During periods when the red light may be obscured by fog, mist, or rain, an audible signal consisting of a long blast followed by a short blast of a whistle or horn, repeated every 30 seconds, shall be sounded from the signal tower as an adjunct to the red light.

(2) *Signs.* Large signs with silver reflective background and stop sign red letters are erected one-fourth mile upstream and downstream from the Gulf Intracoastal Waterway on the Colorado River. The legend states "DO NOT PROCEED BEYOND THIS POINT WHEN SIGNAL TOWER LIGHT IS RED." These signs must be obeyed.

NOTE: The foregoing regulations are supplementary to the regulations in § 207.180.

[31 FR 15310, Dec. 7, 1966, as amended at 34 FR 15797, Oct. 14, 1969]

§ 207.188 Corpus Christi Bay, Tex.; seaplane restricted area, U.S. Naval Air Station, Corpus Christi.

(a) *The area.* The waters of Corpus Christi Bay within the area described as follows: Beginning at a point on the south shore of Corpus Christi Bay at the "North Gate" of the U.S. Naval Air Station at longitude 97°17'15.0" W.; thence through points at:

North latitude	West longitude
27°42'34.9"	97°17'09.6"
27°41'46.8"	97°14'23.8"
27°41'15.1"	97°14'35.4"
27°41'27.0"	97°15'16.7"
27°40'41.6"	97°15'33.3"

thence to a point on shore at latitude 27°40'44.9" N.; thence along the shore to the point of beginning.

(b) *The regulations.* (1) No vessel or watercraft shall enter or remain in the area at any time, day or night, except with express written approval of the enforcing agency, or as a result of force majeure.

(2) The regulations in this section shall be enforced by the Chief of Naval Air Training, U.S. Naval Air Station, Corpus Christi, Tex., and such agencies as he may designate.

[43 FR 30054, July 13, 1978]

§ 207.200 Mississippi River below mouth of Ohio River, including South and Southwest Passes; use, administration, and navigation.

(a) *Mississippi River bank protection works provided by United States.* Except in case of great emergency, no vessel or craft shall anchor over revetted banks of the river, and no floating plant other than launches and similar small craft shall land against banks protected by revetment except at regular commercial landings. In all cases, every precaution to avoid damage to

the revetment works shall be exercised. The construction of log rafts along mattressed or paved banks or the tying up and landing of log rafts against such banks shall be performed in such a manner as to cause no damage to the mattress work or bank paving. Generally, mattress work extends out into the river 600 feet from the low water line. Information as to the location of revetted areas may be obtained from, and will be published from time to time by, the District Engineers, Corps of Engineers, New Orleans, Louisiana, Vicksburg, Mississippi, and Memphis, Tennessee, and the President, Mississippi River Commission, Vicksburg, Mississippi.

(b) *Mississippi River below Baton Rouge, La., including South and Southwest Passes*—(1) *Supervision.* The use, administration, and navigation of the waterways to which this paragraph applies shall be under the supervision of the District Engineer, Corps of Engineers, New Orleans, Louisiana.

(2)–(3) [Reserved]

(4) *Cable and pipeline crossings.* Any cable or pipeline crossing or extending into the waterways shall be marked by large signs with 12-inch black letters on a white background readable from the waterway side, placed on each side of the river near the point where the cable or pipeline enters the water, and at a sufficient height to be readable above any obstructions normally to be expected at the locality such as weeds or moored vessels.

(5) *Marine accidents.* Masters, mates, pilots, owners, or other persons using the waterway to which this paragraph applies shall notify the District Engineer by the most expeditious means available of all marine accidents, such as fire, collision, sinking, or stranding, where there is possible obstruction of the channel or interference with navigation or where damage to Government property is involved, furnishing a clear statement as to the name, address, and ownership of the vessel or vessels involved, the time and place, and the action taken. In all cases, the owner of the sunken vessel shall take immediate steps properly to mark the wreck.

[15 FR 3325, May 30, 1950, as amended at 17 FR 6594, July 18, 1952; 27 FR 3166, Apr. 3, 1962; 33 FR 10456, July 23, 1968; 42 FR 51773, Sept. 29, 1977; 42 FR 57961, 57962, Nov. 7, 1977]

§ 207.249 Ouachita and Black Rivers, Arkansas and Louisiana, mile 0.0 to mile 237.0 (Arkansas-Louisiana line) above the mouth of the Black River; use, administration, and navigation.

(a) *Commercial statistics.* (1) As required by section 11 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), owners, agents, masters, and clerks of vessels plying upon the waterways to which this section applies shall furnish information on such activities for statistical purposes.

(2) The Waterway Traffic Report, ENG Form 3102, is prescribed for collecting information and data on vessels transiting locks and regulated canals. Copies of this form may be obtained free of charge from the District Engineer or the lockmaster at each lock.

(3) A report on the prescribed form shall be made and presented to the lockmaster at any of the federally operated locks for each trip made. Where no federally operated lock is passed, the report shall be mailed promptly to the District Engineer. Upon receipt of a written request from persons or corporations making frequent use of the waterways, permission may be granted to submit monthly reports in lieu of reports by trips.

(b) *Locks*—(1) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock and of the area set aside as the lock area, including the lock approach channels. He shall insure that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel or other floating thing in the lock or approaches except by or under the direction of the lock-

master or his assistants. For the purpose of the regulations in this section, the "lock area" is considered to extend from the downstream to the upstream arrival posts.

(2) *Sound signals.* (i) Vessels desiring passage through a lock in either direction shall give notice to the lockmaster by one long and one short distinct blast of a horn or whistle when not less than three-fourths mile from the lock. When carrying dangerous cargo, the signal will be one long and two short blasts of the horn or whistle. When the lock is ready for entrance, the lockmaster shall reply with one long blast of a horn or whistle. When the lock is not ready for entrance, the lockmaster shall reply by four or more short, distinct blasts of a horn or whistle (danger signal). Permission to leave the lock shall be indicated by the lockmaster by one short blast. A distinct blast is defined as a clearly audible blast of any length. A long blast means a blast of from 4 to 6 seconds' duration. A short blast is of about 1 second's duration.

(ii) Vessels that are not equipped with a sound signal desiring passage through a lock shall give notice to the lockmaster by one long blast of the horn located at either end of the lock wall. The horn may be activated by pulling the properly marked chain or rope hanging from the horn down to the water surface. One long blast means a blast of from 4 to 6 seconds' duration.

(3) *Visual signals.* Signal lights will be displayed outside each lock gate to supplement the sound signals, as follows:

(i) One green light to indicate that the lock is open to approaching navigation.

(ii) One red light to indicate that the lock is not open to approaching navigation. Vessels shall stand clear.

(iii) One amber light to indicate that the lock is being made ready to receive vessels for lockage.

(iv) Navigation over the dam is possible during high water. When this condition exists, a continuous flashing red light, visible upstream and downstream, will be displayed to indicate that traffic will bypass the lock and pass over the dam.

(4) *Radiotelephone.* Two-way radio equipment is provided at all locks. The "Safety and Calling" channel (Channel 16, frequency of 156.8 mhz), will be monitored at all times for initial communication with vessels. Information transmitted or received in these communications shall in no way affect the requirements for the use of sound signals or display of visual signals as provided in paragraphs (b)(2) and (3) of this section.

(5) *Precedence at locks.* (i) The vessel arriving first at a lock will be first to lock through. In the case of vessels approaching the lock simultaneously from opposite directions, the vessel approaching at the same elevation as the water in the lock chamber will be locked through first. Precedence shall be given to vessels belonging to the United States, passenger vessels, commercial vessels, rafts, and pleasure craft, in the order named. Arrival posts or markers will be established ashore above and below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the lock within the meaning of this paragraph (b)(5). The lockmaster may prescribe such departure from the normal order of precedence stated above, as in his judgment, is warranted under prevailing circumstances to achieve best lock utilization.

(ii) The lockage of pleasure boats, houseboats, or like craft may be expedited by locking them through with commercial craft (other than barges carrying dangerous cargoes). If, after the arrival of such craft, no combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockages shall be made. Dangerous cargoes are described in Part 146, Title 46, Code of Federal Regulations.

(iii) Vessels, tows, or rafts with overall dimensions greater than 80 feet wide, 600 feet long, and 9 feet draft, or tows or rafts requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind,

current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster finds necessary at the time of transit.

(6) *Entrance to an exit from locks.* No vessel or raft shall enter or leave locks before being signaled to do so. While waiting their turn, vessels or rafts must not obstruct navigation and must remain at a safe distance from locks. Before entering a lock they shall take position in the rear of any vessels or rafts that precede them, and there arrange the tow for locking in sections if necessary. Masters and pilots of vessels or persons in charge of rafts shall cause no undue delay in entering or leaving locks upon receiving the proper signal. They shall take such action as will insure that the approaches are not at any time unnecessarily obstructed by parts of a tow awaiting lockage or already passed through. They shall provide sufficient men to move through locks promptly without damage to the structures. Vessels or tows shall enter locks with reasonable promptness after being signaled to do so.

(7) *Lockage and passage of vessels.* (i) Vessels shall enter and leave locks under such control as to prevent any damage to the locks, gates, guide walls, guard walls, and fenders. Vessels shall be provided with suitable lines and fenders, shall always use fenders to protect the walls and gates, and when locking at night shall be provided with suitable lights and use them as directed. Fenders on vessels shall be water-soaked or otherwise fire proofed before being utilized in the lock or approaches. Vessels shall not meet or pass each other anywhere between the guide walls or fender system at the approaches to locks.

(ii) Vessels which do not have a draft of at least 2 feet less than the depth over sills, or which have projections liable to damage gates, walls, or fenders, shall not enter the approaches to or pass through locks. Information concerning depth over sills may be obtained from the lockman on duty.

(iii) Vessels having chains, lines, or drags either hanging over the sides or ends or dragging on the bottom for steering or other purposes will not be permitted to pass locks or dams.

(iv) Towing vessels shall accompany all tows or partial tows through locks.

(v) No vessel whose cargo projects beyond its sides will be admitted to lockage.

(vi) Vessels in a sinking condition shall not enter locks or approaches.

(vii) The lockmaster may refuse to lock vessels which in his judgment fail to comply with the regulations in this paragraph.

(viii) This section shall not affect the liability of the owners and operators of boats for any damage caused by their operations to locks or other structures.

(8) *Number of lockages.* Tows or rafts locking in sections will generally be allowed only two consecutive lockages if individual vessels are waiting for lockage, but may be allowed more in special cases. If tows or rafts are waiting above and below a lock for lockage, sections will be locked both ways alternately whenever practicable. When two or more tows or rafts are waiting lockage in the same direction, no part of one shall pass the lock until the whole of the one preceding it shall have passed.

(9) *Mooring.* (i) Vessels and rafts when in a lock shall be moored where directed by the lockmaster by bow, stern, and spring lines to the bitts provided for that purpose and lines shall not be let go until the signal is given for the vessel or raft to leave. Tying to the lock ladders is prohibited.

(ii) The mooring of vessels or rafts near the approaches to locks except while waiting for lockage, or at other places in the pools where such mooring interfers with general navigation, is prohibited.

(10) *Operating locks.* The lock gates, valves, and accessories will be moved only under the direction of the lockmaster; but, if required, all vessels and rafts using the locks shall furnish ample help on the lock walls for handling lines under the direction of the lockmaster.

(c) *Trespass on U.S. property.* Trespass on lock grounds or other waterway property or injury to the banks, lock entrances, locks, cribs, dams, piers, fences, trees, buildings, or any

other property of the United States pertaining to the waterway is strictly prohibited. No landing of freight, passengers, or baggage will be allowed on or over Government piers, lock walls, guide or guard walls, except by permission of the lockmaster. No person except employees of the United States or persons assisting with the locking operations under the direction of the lockmaster will be allowed on the dam, lock walls, guide walls, guard walls, abutments, or appurtenant structures.

(d) *Vessels to carry regulations.* A copy of the regulations in this section shall be kept at all times on board each vessel regularly navigating the waterways to which the regulations in this section apply. Copies may be obtained free of charge at any of the locks or from the District Engineer upon request.

[37 FR 14778, July 25, 1972]

§ 207.250 Ouachita River, Mile 237.0 (Ark. and La. line) above the mouth of the Black River to the head of navigation; use, administration, and navigation.

(a) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock and lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistant.

(b) *Signals.* Boats desiring lockage in either direction shall give notice to locktenders, at not more than three-fourths mile from lock, by one long blast of whistle, not exceeding 10 seconds, followed by one short blast, not exceeding 3 seconds' length. The signal from locks for boats or other crafts to enter will be a white flag or a white light whirled in a circle, and the signal to leave will be a white flag or a white light moved back and forth horizontally.

(c) *Draft of boats.* No boat, barge, or vessel of any kind shall be allowed ordinarily to enter a lock drawing more water, to within 3 inches, than is shown by the gages on the lock sills; and any boat making such attempt shall not delay other boats in lightering cargo, but if directed by the lock officer shall withdraw so as to leave the entrance unobstructed. No boat, barge, or vessel of any kind will attempt to pass through the navigation pass of the dam drawing more water, to within 3 inches, than is shown by the gage on the pier adjacent to the lock.

(d) *Precedence at locks.* The vessel arriving first at a lock shall be first to lock through, but precedence shall be given to vessels belonging to the United States and to commercial vessels in the order named. Arrival posts or markers may be established ashore, above or below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

(e) *Lockage of pleasure boats.* The lockage of pleasure boats, houseboats, or like craft shall be expedited by locking them through with commercial craft (other than barges carrying petroleum products or highly hazardous materials) in order to utilize the capacity of the lock to its maximum. If, after the arrival of such craft, no separate or combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockage shall be made.

(f) *Rafts not towed.* Rafts to be locked through shall be moored in such a manner as not to close upper entrance to the locks and the sections for locking shall be brought to the lock as directed by the lock officer in charge. After passing the lock, the sections shall be reassembled at such distance below the lock as not to obstruct the entrance to boats privileged to pass through. Each raft shall furnish enough assistance to pass the raft readily.

(g) *Stations while waiting for lockages.* Descending boats, while waiting

their turn to enter a lock, must lie at least 500 feet above and in such a position as to leave sufficient room for the passage of boats leaving the lock, or those having precedence in entering. Ascending boats, while waiting their turn to enter, must keep out far enough to give boats leaving the lock free passage between them and the pile clusters or riverbank.

(h) *Entrance to and exit from locks.* In case two or more boats or tows are to enter for the same lockage, their order of entry shall be determined by the lock officer or his authorized agent. No boat shall attempt to run ahead of another while in a lock. The boat that enters first shall have precedence in exit.

(i) *Unnecessary delay at locks.* (1) Vessels must not obstruct navigation by unnecessary delay in entering or leaving locks. Masters and pilots will be held to a strict accountability in this respect. Boats or other craft failing to enter locks with reasonable promptness after being signaled to do so will lose their turn.

(2) Boats arriving in the entrance to the locks with their tows so shaped as not to facilitate locking, or in a leaky condition, may, in the discretion of the lockmaster, lose their turn.

(3) Leaky boats may be excluded from the locks until they are put in shape to be safely passed.

(j) *Mooring in locks.* Steamboats and other craft, when in the locks, shall be moored where directed by the lock officer, by bow, stern, and spring lines to the snubbing posts or hooks provided for that purpose. Tying boats to the lock ladders is strictly prohibited.

(k) *Handling of boats and rafts.* The captains in charge of tows and those in charge of rafts must provide sufficient men to move barges and rafts in and out of the locks without unnecessary delay.

(l) *Protection of lock gates.* Boats will not be permitted to enter or leave the locks until the lock gates are fully in the gate recesses and the lock officer has directed the boat to start.

(m) *Damage to locks or other structures.* This section shall not affect the liability of the owners and operators of boats for any damage caused by their operations to locks or other structures. The sides of all craft passing through locks must be free from projections of any kind or sharp corners which might injure the walls. Steamboats must be provided with suitable fenders. One man shall be kept at the head of every tow until it has cleared the lock and guide walls. He shall use fender to protect walls and use pike pole to help pass drift or ice while in the vicinity of lock.

(n) *Handling machinery.* None but employees of the United States for the purpose will be allowed to move any valves, gate, or other machinery belonging to the locks, but the lockmaster or his assistant may call for assistance from the master of any boat using the locks, should such aid be necessary, and when rendering such assistance the men so employed shall be strictly under the orders of the lockmaster or his assistant.

(o) *Refuse in locks.* The placing of any ashes, refuse, or obstructions in the entrance of locks or in the locks, or on the walls thereof, is prohibited.

(p) *Commercial statistics.* Masters or clerks of boats shall furnish in writing to lock officers such statistics of passengers and cargoes as may be required.

(q) *Trespass on lock property.* (1) The landing of freight or baggage on the lock walls or lock grounds will not be allowed, except for the use of the Government or its employees.

(2) Trespass on lock property or injury to the entrance, banks, cribs, locks, fences, trees, houses, shops, or other property of the United States pertaining to the locks is strictly prohibited.

(r) *Penalties.* In addition to the penalties prescribed by the Act of Congress previously quoted, boats which fail to comply with paragraphs (a) to (q) of this section will be refused lockage until they are complied with.

(s) *Lights.* (1) Except when submerged, each lock and adjacent pier of the dam will be lighted from sunset to sunrise without regard to the moon. A white light on the pier and a red light on the lock will indicate that the dam is navigable between the lights and the lock is not. A red light on the pier and a white light on the lock will indicate that the lock is navigable and the

dam is not. A white light on both pier and lock will indicate that both dam and lock are navigable, the dam between the lights only. A red light on both pier and lock are navigable, the dam between the dam is navigable. Red and white lights on the lock will be exposed on the river wall at its junction with the dam. The downstream end of the river wall will be marked by a green light.

(2) When lock and piers are submerged, and for locks where the river configuration will permit, a white light will be exposed on the bank, both above and below the lock, the two lights defining a line crossing the dam at the middle point of the navigation pass. In other cases, when locks and piers are submerged, two red lights will be exposed, one above the other, on the bank at the upstream end of the land wall or the lock.

(t) *Raising or lowering dams.* When a dam is being raised or lowered all passing craft must use the lock until signaled that the pass is clear, and descending boats or tows desiring to go through the navigation pass must remain above the head of the lock until signaled to proceed.

(u) *Avoidance of dams.* When dams are raised all boats plying in upper pools, but not intending to enter lock, are forbidden to approach nearer to dams than a line extending across the river from the pile cluster fartherest upstream from lock.

(v) *Damage to construction work.* To avoid damage or hindrance by wave action to plant or structures connected with the construction or repair of locks and dams, during the time when such work is in actual progress, steamboats should regulate their speed between the lower line of such work (including plant) and a point 500 yards above the upper line of work. Between such limits, ascending boats will reduce their speed to not exceed 3 miles per hour, and descending boats will reduce their speed to 3 miles in excess of the current, which may be exceeded if the wheel is idle.

(w) *Complaints.* Complaints or other communications relating to the navigation of the Ouachita-Black River System or the maintenance and operation of the locks, dams, and bridges should be addressed to the U.S. Army Engineer District, Vicksburg, Vicksburg, Miss.

(x) *Vessels to carry regulations.* A copy of the regulations of this section will be furnished to masters of boats on application to lock officers.

[37 FR 14779, July 25, 1972]

§ 207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth at Kleinston Landing to Fisher Street; navigation.

(a) *Signals.* Vessels navigating the canal will be governed by the Pilot Rules for Western Rivers (rivers emptying into the Gulf of Mexico and their tributaries) prescribed by the United States Coast Guard. (See Part 95 of this title.)

(b) *Rafts.* Rafts will be permitted to navigate the canal only if properly and securely assembled. Each section of a raft shall be so secured within itself as to prevent the sinking of any log, and so fastened with chains or wire rope that it cannot be separated or bag out or materially change its shape. All logs, chains, and other means used in assembling rafts shall be in good condition and of ample size and strength to accomplish their purpose. No section of a raft will be permitted to be towed unless the logs float sufficiently high in the water to make it evident that the section will not sink en route. Rafts shall not be of greater dimensions than 50 feet wide by 600 feet long, and if longer than 300 feet they shall be handled by two tugs; and in all cases they must be handled by sufficient tug power to make headway and guide the raft so as to give half the channel to passing vessels.

(c) *Mooring.* No vessel or raft shall moor along the banks of the canal for a period longer than five days without written permission from the District Engineer, Corps of Engineers, P. O. Box 60, Vicksburg, Miss. At stages below 20 feet on the canal gage no boats, barges, or rafts shall be moored or tied up abreast of or overlapping each other in the canal if the overall width exceeds 50 feet: *Provided,* That temporary permits may be issued at the discretion of the District Engineer

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for boats or barges with widths exceeding 50 feet to moor in the canal. When tied up, boats or barges shall be moored by bow and stern lines parallel to the bank and as close in as practicable. Rafts shall be secured at sufficiently close intervals to insure their not being drawn away from the bank by winds, current, or the suction of passing vessels.

(d) [Reserved]

(e) *Refuse in canal.* No person shall roll or throw any stones, ashes, cinders, barrels, logs, log butts, sawdust, shavings, refuse, or any other material into the canal or the approach thereto, or place any such material on the bank or berm so that it is liable to be rolled, thrown, or washed into the canal.

(f) *Preservation of works of improvement.* Masters and pilots of all craft using the canal shall avoid damaging any revetment, dike, floodwall, or other work of improvement placed in or adjacent to the canal. They shall not disturb any gages or marks set as aids to navigation in the canal or approaches thereto.

(g) *Fairway.* A clear channel not less than 175 feet wide shall at all times be left open to permit free and unobstructed navigation by all types of vessels and rafts. The District Engineer will specify the width of fairway required.

[13 FR 9562, Dec. 31, 1948; 42 FR 57962, Nov. 7, 1977]

§ 207.270 Tallahatchie River, Miss., between Batesville and the mouth; logging.

(a) The floating of "sack", rafts, or of loose timbers, logs, or cribs is prohibited.

(b) Rafts shall be made up of logs parallel with each other, secured, and held closely together by cross sticks, chains, or cables placed across each crib and at the joints between cribs. No raft shall be over 60 feet wide or 800 feet long.

(c) In rafting nonbuoyant timber each crib must contain self-buoyant logs in such proportion of "floaters" to "sinkers" as will safely float the whole; and in assembling such cribs, extra strong connections must be used to prevent the breaking up of a crib or the detachment of individual logs.

(d) No raft shall be moved at river stages less than that corresponding to a reading of 3⅞ feet on the United States Weather Bureau gage at Greenwood, Miss.

(e) A raft in transit must be accompanied by sufficient men, or by power boats of sufficient capacity to properly manage the movement of the raft and to keep it from being an obstruction to other craft navigating the river, or from forming jams at bridges.

(f) Rafts in transit must be so floated, and when not in transit be so tied to the bank, as not to interfere with the passage of boats.

(g) When rafts are left with no one in attendance they must be securely tied at each end and at as many intermediate points as will prevent them from bagging into the stream. When left at night a white light shall be exposed at each end of the raft.

(h) This section shall apply to the portion of the Tallahatchie River, Miss., between Batesville, Panola County, Miss., and the mouth.

[Regs. Feb. 18, 1918, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.275 White River, Arkansas Post Canal, Arkansas River, and Verdigris River between Mississippi River, Ark., and Catoosa, Okla.; use, administration, and navigation.

(a) The regulations in this section shall apply to:

(1) *Waterways.* White River between Mississippi River and Arkansas Post Canal, Ark.; Arkansas Post Canal, Ark.; Arkansas River between Arkansas Post Canal, Ark., and Verdigris River, Okla.; Verdigris River between Arkansas River and Catoosa, Okla.; and reservoirs on these waterways between Mississippi River, Ark., and Catoosa, Okla.

(2) *Locks.* All locks and appurtenant structures in the waterways described in paragraph (a)(1) of this section.

(3) [Reserved]

(4) *Vessels and rafts.* The term "vessels" as used in this section includes every description of watercraft used, or capable of being used, as a means of

transportation on water, other than rafts.

(b) *Authority of District Engineers.* The use, administration, and navigation of the waterways and structures to which this section applies shall be under the direction of the officers of the Corps of Engineers, U.S. Army, detailed in charge of the respective districts, and their authorized assistants. The cities in which these District Engineers are located, and the limits of their jurisdictions, are as follows:

(1) *District Engineer, U.S. Army Engineer District, Little Rock, Ark.* From Mississippi River, Ark., to Arkansas-Oklahoma State line at Fort Smith, Ark.

(2) *District Engineer, U.S. Army Engineer District, Tulsa, Okla.* From Arkansas-Oklahoma State line at Fort Smith, Ark., to Catoosa, Okla.

(c) *Commercial statistics.* (1) As required by section 11 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), owners, agents, masters, and clerks of vessels plying upon the waterways to which this section applies shall furnish information on such activities for statistical purposes.

(2) The Waterway Traffic Report, ENG Form 3102, is prescribed for collecting information and data on vessels transiting locks and regulated canals. Copies of this form may be obtained free of charge from the District Engineer or the lockmaster at each lock.

(3) A report on the prescribed form shall be made and presented to the lockmaster at any of the federally operated locks for each trip made. Where no federally operated lock is passed, the report shall be mailed promptly to the District Engineer. Upon receipt of a written request from persons or corporations making frequent use of the waterways, permission may be granted to submit monthly reports in lieu of reports by trips.

(4) All persons rafting and towing logs shall submit reports giving such statistical information as may be required by the District Engineer.

(d) *Locks*—(1) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock and of the area set aside as the lock area, including the lock approach channels. He shall ensure that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants. For the purpose of the regulations in this section, the "lock area" is considered to extend from the downstream to the upstream arrival posts.

(2) *Sound signals.* Vessels desiring passage through a lock in either direction shall give notice to the lockmaster by one long and distinct blast of a horn or whistle when not less than one-half mile from the lock. When carrying dangerous cargo, the signal will be one long and one short blast of the horn or whistle. When the lock is ready for entrance, the lockmaster shall reply with one long blast of a horn or whistle. When the lock is not ready for entrance, the lockmaster shall reply by four or more short, distinct blasts of a horn or whistle (danger signal). Permission to leave the lock shall be indicated by the lockmaster by one short blast. A distinct blast is defined as a clearly audible blast of any length. A long blast means a blast of from 4 to 6 seconds duration. A short blast is of about 1 second's duration.

(3) *Visual signals.* Signal lights will be displayed outside each lock gate to supplement the sound signals, as follows:

(i) One flashing green light to indicate that the lock is open to approaching navigation.

(ii) One flashing red light to indicate that the lock is not open to approaching navigation. Vessels shall stand clear.

(iii) One flashing amber light to indicate that the lock is being made ready to receive vessels for lockage.

(iv) Navigation over the dam is possible only at Lock and Dam No. 1 during

high water. When this condition exists, a flashing purple light, visible upstream and downstream, will be displayed to indicate that traffic will bypass the lock and pass over the dam.

(4) *Radiotelephone.* Two-way radio equipment is provided at all locks. The "Safety and Calling" channel (Channel 16, frequency of 156.8mhz), will be monitored at all times for initial communication with vessels. Information transmitted or received in these communications shall in no way affect the requirements for the use of sound signals or display of visual signals as provided in paragraphs (d)(2) and (3) of this section.

(5) *Precedence at locks.* (i) The vessel arriving first at a lock will be first to lock through. In the case of vessels approaching the lock simultaneously from opposite directions, the vessel approaching at the same elevation as the water in the lock chamber will be locked through first. Precedence shall be given to vessels belonging to the United States, passenger vessels, commercial vessels, rafts, and pleasure craft, in the order named. Arrival posts or markers will be established ashore above and below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the lock within the meaning of this paragraph. The lockmaster may prescribe such departure from the normal order of precedence stated above as, in his judgment, is warranted under prevailing circumstances to achieve best lock utilization.

(ii) The lockage of pleasure boats, houseboats, or like craft may be expedited by locking them through with commercial craft (other than barges carrying dangerous cargoes). If, after the arrival of such craft, no combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockage shall be made. Dangerous cargoes are described in 46 CFR Part 146.

(iii) Vessels, tows, or rafts with overall dimensions greater than 105 feet wide, 600 feet long, and 9 feet draft, or tows or rafts requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster finds necessary at the time of transit.

(6) *Entrance to and exit from locks.* No vessel or raft shall enter or leave locks before being signaled to do so. While waiting their turn, vessels or rafts must not obstruct navigation and must remain at a safe distance from locks. Before entering a lock they shall take position in the rear of any vessels or rafts that precede them, and there arrange the tow for locking in sections if necessary. Masters and pilots of vessels or persons in charge of rafts shall cause no undue delay in entering or leaving locks upon receiving the proper signal. They shall take such action as will insure that the approaches are not at any time unnecessarily obstructed by parts of a tow awaiting lockage or already passed through. They shall provide sufficient men to move through locks promptly without damage to the structures. Vessels or tows shall enter locks with reasonable promptness after being signaled to do so.

(7) *Lockage and passage of vessels.* (i) Vessels shall enter and leave locks under such control as to prevent any damage to the locks, gates, guide walls, guard walls, and fenders. Vessels shall be provided with suitable lines and fenders, shall always use fenders to protect the walls and gates, and when locking at night shall be provided with suitable lights and use them as directed. Fenders on vessels shall be water-soaked or otherwise fire-proofed before being utilized in the lock or approaches. Vessels shall not meet or pass each other anywhere between the guide walls or fender system at the approaches to locks.

(ii) Vessels which do not have a draft of at least 2 feet less than the depth over sills, or which have projections liable to damage gates, walls, or fenders, shall not enter the approaches to or pass through locks. Information concerning depth over sills may be obtained from the lockman on duty.

(iii) Vessels having chains, lines, or drags either hanging over the sides or ends or dragging on the bottom for steering or other purposes will not be permitted to pass locks or dams.

(iv) Towing vessels shall accompany all tows or partial tows through locks.

(v) No vessel whose cargo projects beyond its sides will be admitted to lockage.

(vi) Vessels in a sinking condition shall not enter locks or approaches.

(vii) The lockmaster may refuse to lock vessels which, in his judgment, fail to comply with the regulations in this paragraph.

(8) *Lockage of rafts.* Rafts shall be locked through in sections as directed by the lockmaster. No raft will be locked that is not constructed in accordance with the requirements stated in paragraph (f) of this section. The person in charge of a raft desiring lockage shall register with the lockmaster immediately upon arriving at the lock and receive instructions for locking.

(9) *Number of lockages.* Tows or rafts locking in sections will generally be allowed only two consecutive lockages if individual vessels are waiting for lockage, but may be allowed more in special cases. If tows or rafts are waiting above and below a lock for lockage, sections will be locked both ways alternately whenever practicable. When two or more tows or rafts are waiting lockage in the same direction, no part of one shall pass the lock until the whole of the one preceding it shall have passed.

(10) *Mooring.* (i) Vessels and rafts when in a lock shall be moored where directed by the lockmaster by bow, stern, and spring lines to the bitts provided for that purpose, and lines shall not be let go until the signal is given for the vessel or raft to leave. Tying to the lock ladders is prohibited.

(ii) The mooring of vessels or rafts near the approaches to locks except while waiting for lockage, or at other places in the pools where such mooring interferes with general navigation, is prohibited.

(11) *Operating locks.* The lock gates, valves, and accessories will be moved only under the direction of the lockmaster; but, if required, all vessels and rafts using the locks shall furnish ample help on the lock walls for handling lines under the direction of the lockmaster.

(e) *Waterways.* (1) [Reserved]

(2)(i)—(iii) [Reserved]

(iv) Lights shall be displayed in accordance with provisions of the Federal Pilot Rules for Western Rivers.

[33 FR 9611, July 2, 1968; 42 FR 57962, Nov. 7, 1977]

§ 207.280 White River, Ark.; use, administration, and navigation of locks in upper White River.

(a) *Definition.* The word "lockmaster" as used in this section designates the authorized representative of the United States in immediate charge of the locks, irrespective of the official rating held by such representative.

(b) *Authority of lockmasters.* The movement of all boats and floating craft in the locks and approaches thereto shall be under the direction of the lockmasters.

(c) *Signals.* Ascending steamers shall signal for the use of the lock by giving one long distinct blast of the whistle; descending steamers shall give three long distinct blasts of the whistle. Vessels and other craft not fitted with steam power shall give similar signals by means of a horn. The whistle or horn is to be sounded when the steamer, vessel, or other craft is 2,000 feet from the lock.

(d) *Maximum draft.* No boat or other craft that has a draft giving less than 3 inches vertical clearance over the miter sills will be permitted to enter or attempt to enter a lock.

(e) *Precedence at locks.* Ordinarily the boat arriving first at a lock will be locked through first, and in case of boats or other craft approaching the lock simultaneously from opposite directions the descending boat or craft will be locked through first; but when several boats or other craft are to be passed precedence shall be given:

(1) *First.* To boats and craft owned by the United States or employed upon river and harbor improvement work.

(2) *Second.* To passenger boats.

(3) *Third.* To freight and tow boats.

(4) *Fourth.* To rafts in their turn.

(5) *Fifth.* To small vessels and craft bent on pleasure only.

(f) *Mooring in locks.* All boats, rafts, and other craft, when in the locks shall be moored by head and spring lines to the fastenings provided for that purpose.

(g) *Mooring outside of locks.* (1) The mooring of boats or other craft near the entrance of locks or at other places in the pools where such mooring will interfere with the general navigation of the streams is prohibited. Boats or other craft wishing to tie up for several hours or days in the vicinity of a lock must notify the lockmaster, who will assign a mooring place to them.

(2) Rafts to be locked through shall be moored in such manner as not to close the upper entrance to the lock, and the sections for locking shall be brought to the lock, as directed by the lockmaster. After passing the lock the sections shall be reassembled at such distance below the lock as not to obstruct the lower entrance.

(h) *Time for entering or leaving a lock.* No boat will be permitted to enter or leave a lock until the gates are fully in the gate recesses and the lockmaster has directed the boat to be moved.

(i) *Handling of boats and rafts.* The masters in charge of tows and the persons in charge of rafts or other craft must provide a sufficient number of men to move barges, rafts, and other craft into and out of the lock easily and promptly.

(j) *Handling of gates and valves.* The lock gates and valves will be moved only by or under the direction of the lockmaster, but all craft using the lock must furnish the necessary help on the lock walls when called upon by the lockmaster to do so.

(k) *Damage to locks and appurtenances.* Craft passing through the locks must be free from sharp corners and projections of any kind that will be liable to injure the lock walls or the crib facings. Owners of boats or other craft will be held responsible for any damages done by them to the locks or to any of the appurtenances thereto.

(l) *Refuse, etc.* The placing of any ashes, cinders, or other refuse or obstruction in the entrance to, or in the locks, or on the walls thereof, or on the lock grounds, is prohibited.

(m) *Trespass on lock grounds.* Trespass on lock grounds, or injury to the lock entrances, river banks, cribs, dams, locks, fences, trees, buildings, or any other property of the United States pertaining to the locks, is prohibited. Neither passengers nor freight shall be received or discharged from the lock walls, guide or guard walls, except by permission of the lockmaster. No person except employees of the United States and persons actually engaged in assisting with the locking of boats or other craft will be allowed on the dam, lock walls, guide or guard walls, abutments, or cribs, except by permission of the lockmaster.

(n) *Fishing restricted.* No person or persons shall take, in any other manner than by angling, i.e., with rod and line, any fish from the river within the limits of the land owned by the United States at the several lock and dam sites, and no nets, weirs, traps, fish fences, or other contrivance shall be placed in the river in the vicinity of any lock and dam in such manner or location as will in any way obstruct the entrances to the fishways, or in any way interfere with fish ascending or descending the falls over the dams.

(o) *Commercial statistics.* Owners, masters, or clerks of boats or other craft passing through a lock shall furnish to the lockmaster a statement showing the number of passengers carried and the quantity and kind of freight making up the cargo.

[Regs., June 25, 1920, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.290 Current River above Van Buren, Mo.; logging.

(a) Parties engaged in floating loose ties and logs shall so conduct their operations as not to interfere with navigation by rafts under control and by boats. The maximum number of logs in any drive shall not exceed 2,000. Parties in control of drives shall maintain a time interval of 7 days between the rear end of one drive and the head end of the next drive. Drives, whether in motion or halted, must have at all times a sufficient number of atten-

dants to insure a compliance with this section. The floating of unattended blocks of ties or logs and the deposit of unattended ties or logs in such locations that they are liable to go adrift is prohibited.

(b) If rafts, which are manned and controlled by sweeps or other means overtake a drive and desire to pass through, the persons in control of the drive shall promptly provide an opening through the drive and shall render the raft the assistance of not less than two men while passing through, for which assistance no charge shall be made against the owner of the raft by the persons owning or controlling the drive.

(c) If a power boat overtakes or meets a drive and desires to pass through, the persons in control of the drive shall promptly provide an opening through the drive and shall place not less than two men on the boat, if so requested by the boat owner, to assist it through the drive, for which no charge shall be made against the owner of the boat by those owning or controlling the drive; nor shall any charges be made against the persons owning or controlling the drive by the owner of the boat for the transportation of the men referred to, nor for any board furnished them during the time they are assisting the boat through the drive.

(d) In cases of formation of jams or blockades of the channel by loose logs, loose ties, or any form of raft, the persons in control of the logs, ties, or rafts shall immediately proceed to break said jam or jams, working continuously day and night until said jam or jams are broken, working not less than four men during the period of time the jam or jams are existing.

(e) Booms, anchorages, or similar arrangements for holding logs, ties, and rafts at particular localities shall be so maintained and operated as to afford ample and clear passageway through or around them for boats and rafts, and in case of a blockade at a boom or anchorage the same assistance shall be rendered rafts or boats desiring to pass through as is provided for in paragraphs (b) and (c) of this section.

NOTE: All cases of interference of log or tie drives with the use of the river by other forms of navigation should be reported with dates, names of those responsible, and all pertinent facts, to the United States Engineer Office, P. O. Box 97, Memphis 1, Tenn.

[Regs., Mar. 2, 1916, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.300 Ohio River, Mississippi River above Cairo, Ill., and their tributaries; use, administration, and navigation.

(a) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants. In the event of an emergency, the lockmaster may depart from these regulations as he deems necessary. The lockmasters shall also be charged with the control and management of Federally constructed mooring facilities.

(b) *Safety rules for vessels using navigation locks.* The following safety rules are hereby prescribed for vessels in the locking process, including the act of approaching or departing a lock:

(1) *Tows with flammable or hazardous cargo barges, loaded or empty.* (i) Stripping barges or transferring cargo is prohibited.

(ii) All hatches on barges used to transport flammable or hazardous materials shall be closed and latched, except those barges carrying a gas-free certificate.

(iii) Spark-proof protective rubbing fenders ("possums") shall be used.

(2) *All vessels.* (i) Leaking vessels may be excluded from locks until they have been repaired to the satisfaction of the lockmaster.

(ii) Smoking, open flames, and chipping or other spark-producing activi-

ties are prohibited on deck during the locking cycle.

(iii) Painting will not be permitted in the lock chamber during the locking cycle.

(iv) Tow speeds shall be reduced to a rate of travel such that the tow can be stopped by checking should mechanical difficulties develop. Pilots should check with the individual lockmasters concerning prevailing conditions. It is also recommended that pilots check their ability to reverse their engines prior to beginning an approach. Engines shall not be turned off in the lock until the tow has stopped and been made fast.

(v) U.S. Coast Guard regulations require all vessels to have on board life saving devices for prevention of drowning. All crew members of vessels required to carry work vests (life jackets) shall wear them during a lockage, except those persons in an area enclosed with a handrail or other device which would reasonably preclude the possibility of falling overboard. All deckhands handling lines during locking procedure shall wear a life jacket. Vessels not required by Coast Guard regulations to have work vests aboard shall have at least the prescribed life saving devices, located for ready access and use if needed. The lockmaster may refuse lockage to any vessel which fails to conform to the above.

(c) *Reporting of navigation incidents.* In furtherance of increased safety on waterways the following safety rules are hereby prescribed for all navigation interests:

(1) Any incident resulting in uncontrolled barges shall immediately be reported to the nearest lock. The report shall include information as to the number of loose barges, their cargo, and the time and location where they broke loose. The lockmaster or locks shall be kept informed of the progress being made in bringing the barges under control so that he can initiate whatever actions may be warranted.

(2) Whenever barges are temporarily moored at other than commercial terminals or established fleeting areas, and their breaking away could endanger a lock, the nearest lock shall be so notified, preferably the downstream lock.

(3) Sunken or sinking barges shall be reported to the nearest lock both downstream and upstream of the location in order that other traffic passing those points may be advised of the hazards.

(4) In the event of an oil spill, notify the nearest lock downstream, specifying the time and location of the incident, type of oil, amount of spill, and what recovery or controlling measures are being employed.

(5) Any other activity on the waterways that could conceivably endanger navigation or a navigation structure shall be reported to the nearest lock.

(6) Whenever it is necessary to report an incident involving uncontrolled, sunken or sinking barges, the cargo in the barges shall be accurately identified.

(d) *Precedence at locks.* (1) The vessel arriving first at a lock shall normally be first to lock through, but precedence shall be given to vessels belonging to the United States. Licensed commercial passenger vessels operating on a published schedule or regularly operating in the "for hire" trade shall have precedence over cargo tows and like craft. Commercial cargo tows shall have precedence over recreational craft, except as described in paragraph (f) of this section.

(2) Arrival posts or markers may be established ashore above and/or below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph. Precedence may be established visually or by radio communication. The lockmaster may prescribe such departure from the normal order of precedence as in his judgment is warranted to achieve best lock utilization.

(e) *Unnecessary delay at locks.* Masters and pilots must use every precaution to prevent unnecessary delay in entering or leaving locks. Vessels failing to enter locks with reasonable promptness when signalled to do so shall lose their turn. Rearranging or switching of barges in the locks or in approaches is prohibited unless approved or directed by the lockmaster. This is not meant to curtail "jackknifing" or set-overs where normally practiced.

(f) *Lockage of recreational craft.* In order to fully utilize the capacity of the lock, the lockage of recreational craft shall be expedited by locking them through with commercial craft: *Provided,* That both parties agree to joint use of the chamber. When recreational craft are locked simultaneously with commercial tows, the lockmaster will direct, whenever practicable, that the recreational craft enter the lock and depart while the tow is secured in the lock. Recreational craft will not be locked through with vessels carrying volatile cargoes or other substances likely to emit toxic or explosive vapors. If the lockage of recreational craft cannot be accomplished within the time required for three other lockages, a separate lockage of recreational craft shall be made. Recreational craft operators are advised that many locks have a pull chain located at each end of the lock which signals the lockmaster that lockage is desired. Furthermore, many Mississippi River locks utilize a strobe light at the lock to signal recreational type vessels that the lock is ready for entry. Such lights are used exclusively to signal recreational craft.

(g) *Simultaneous lockage of tows with dangerous cargoes.* Simultaneous lockage of other tows with tows carrying dangerous cargoes or containing flammable vapors normally will only be permitted when there is agreement between the lockmaster and both vessel masters that the simultaneous lockage can be executed safely. He shall make a separate decision each time such action seems safe and appropriate, provided:

(1) The first vessel or tow in and the last vessel or tow out are secured before the other enters or leaves.

(2) Any vessel or tow carrying dangerous cargoes is not leaking.

(3) All masters involved have agreed to the joint use of the lock chamber.

(h) *Stations while awaiting a lockage.* Vessels awaiting their turn to lock shall remain sufficiently clear of the structure to allow unobstructed departure for the vessel leaving the lock. However, to the extent practicable under the prevailing conditions, vessels and tows shall position themselves so as to minimize approach time when signaled to do so.

(i) *Stations while awaiting access through navigable pass.* When navigable dams are up or are in the process of being raised or lowered, vessels desiring to use the pass shall wait outside the limits of the approach points unless authorized otherwise by the lockmaster.

(j) *Signals.* Signals from vessels shall ordinarily be by whistle; signals from locks to vessels shall be by whistle, another sound device, or visual means. when a whistle is used, long blasts of the whistle shall not exceed 10 seconds and short blasts of the whistle shall not exceed 3 seconds. Where a lock is not provided with a sound or visual signal installation, the lockmaster will indicate by voice or by the wave of a hand when the vessel may enter or leave the lock. Vessels must approach the locks with caution and shall not enter nor leave the lock until signaled to do so by the lockmaster. The following lockage signals are prescribed:

(1) *Sound signals by means of a whistle.* These signals apply at either a single lock or twin locks.

(i) Vessels desiring lockage shall on approaching a lock give the following signals at a distance of not more than one mile from the lock;

(*a*) If a single lockage only is required: One long blast of the whistle followed by one short blast.

(*b*) If a double lockage is required: One long blast of the whistle followed by two short blasts.

(ii) When the lock is ready for entrance, the lock will give the following signals:

(*a*) One long blast of the whistle indicates permission to enter the lock chamber in the case of a single lock or to enter the landward chamber in the case of twin locks.

(*b*) Two long blasts of the whistle indicates permission to enter the riverward chamber in the case of twin locks.

(iii) Permission to leave the locks will be indicated by the following signals given by the lock:

(*a*) One short blast of the whistle indicates permission to leave the lock chamber in the case of a single lock or

to leave the landward chamber in the case of twin locks.

(*b*) Two short blasts of the whistle indicates permission to leave the riverward chamber in the case of twin locks.

(iv) Four or more short blasts of the lock whistle delivered in rapid succession will be used as a means of attracting attention, to indicate caution, and to signal danger. This signal will be used to attract the attention of the captain and crews of vessels using or approaching the lock or navigating in its vicinity and to indicate that something unusual involving danger or requiring special caution is happening or is about to take place. When this signal is given by the lock, the captains and crews of vessels in the vicinity shall immediately become on the alert to determine the reason for the signal and shall take the necessary steps to cope with the situation.

(2) *Lock signal lights.* At locks where density of traffic or other local conditions make it advisable, the sound signals from the lock will be supplemented by signal lights. Flashing lights (showing a one-second flash followed by a two-second eclipse) will be located on or near each end of the land wall to control use of a single lock or of the landward lock of double locks. In addition, at double locks, interrupted flashing lights (showing a one-second flash, a one-second eclipse and a one-second flash, followed by a three-second eclipse) will be located on or near each end of the intermediate wall to control use of the riverward lock. Navigation will be governed as follows:

(i) *Red light.* Lock cannot be made ready immediately. Vessel shall stand clear.

(ii) *Amber light.* Lock is being made ready. Vessel may approach but under full control.

(iii) *Green light.* Lock is ready for entrance.

(iv) *Green and amber.* Lock is ready for entrance but gates cannot be recessed completely. Vessel may enter under full control and with extreme caution.

(3) *Radio communications.* VHF-FM radios, operating in the FCC authorized Maritime Band, have been installed at all operational locks (except those on the Kentucky River and Lock 3, Green River). Radio contact may be made by any vessel desiring passage. Commercial tows are especially requested to make contact at least one half hour before arrival in order that the pilot may be informed of current river and traffic conditions that may affect the safe passage of his tow.

(4) All locks monitor 156.8 MHz (Ch. 16) and 156.65 MHz (Ch. 13) and can work 156.65 MHz (Ch. 13) and 156.7 MHz (Ch. 14) Ch. 16 is the authorized call, reply and distress frequency, and locks are not permitted to work on this frequency except in an emergency involving the risk of immediate loss of life or property. Vessels may call and work Ch. 13, without switching, but are cautioned that vessel to lock traffic must not interrupt or delay Bridge to Bridge traffic which has priority at all times.

(k) *Rafts.* Rafts to be locked through shall be moored in such manner as not to obstruct the entrance of the lock, and if to be locked in sections, shall be brought to the lock as directed by the lockmaster. After passing the lock the sections shall be reassembled at such distance beyond the lock as not to interfere with other vessels.

(l) *Entrance to and exit from locks.* In case two or more boats or tows are to enter for the same lockage, their order of entry shall be determined by the lockmaster. Except as directed by the lockmaster, no boat shall pass another in the lock. In no case will boats be permitted to enter or leave the locks until directed to do so by the lockmaster. The sides of all craft passing through any lock shall be free from projections of any kind which might injure the lock walls. All vessels shall be provided with suitable fenders, and shall be used to protect the lock and guide walls until it has cleared the lock and guide walls.

(m) *Mooring*—(1) *At locks.* (i) All vessels when in the locks shall be moored as directed by the lockmaster. Vessels shall be moored with bow and stern lines leading in opposite directions to prevent the vessel from "running" in the lock. All vessels will have one additional line available on the head of the tow for emergency use. The pilothouse shall be attended by qualified person-

nel during the entire locking procedure. When the vessel is securely moored, the pilot shall not cause movement of the propellers except in emergency or unless directed by the lockmaster. Tying to lock ladders is strictly prohibited.

(ii) Mooring of unattended or nonpropelled vessels or small craft at the upper or lower channel approaches will not be permitted within 1200 feet of the lock.

(2) *Outside of locks.* (i) No vessel or other craft shall regularly or permanently moor in any reach of a navigation channel. The approximate centerline of such channels are marked as the sailing line on Corps of Engineers' navigation charts. Nor shall any floating craft, except in an emergency, moor in any narrow or hazardous section of the waterway. Furthermore, all vessels or other craft are prohibited from regularly or permanently mooring in any section of navigable waterways which are congested with commercial facilities or traffic unless it is moored at facilities approved by the Secretary of the Army or his authorized representative. The limits of the congested areas shall be marked on Corps of Engineers' navigation charts. However, the District Engineer may authorize in writing exceptions to any of the above if, in his judgment, such mooring would not adversely affect navigation and anchorage.

(ii) No vessel or other craft shall be moored to railroad tracks, to riverbanks in the vicinity of railroad tracks when such mooring threatens the safety of equipment using such tracks, to telephone poles or power poles, or to bridges or similar structures used by the public.

(iii) Except in case of great emergency, no vessel or craft shall anchor over revetted banks of the river, and no floating plant other than launches and similar small craft shall land against banks protected by revetment except at regular commercial landings. In all cases, every precaution to avoid damage to the revetment works shall be exercised. The construction of log rafts along mattressed or paved banks or the tying up and landing of log rafts against such banks shall be performed in such a manner as to cause no damage to the mattress work or bank paving. Generally, mattress work extends out into the river 600 feet from the low water line.

(iv) Any vessel utilizing a federally constructed mooring facility (e.g., cells, bucys, anchor rings) at the points designated on the current issue of the Corps' navigation charts shall advise the lockmaster at the nearest lock from that point by the most expeditious means.

(n) *Draft of vessels.* No vessel shall attempt to enter a lock unless its draft is at least three inches less than the least depth of water over the guard sills, or over the gate sills if there be no guard sills. Information concerning controlling depth over sills can be obtained from the lockmaster at each lock or by inquiry at the office of the district engineer of the district in which the lock is located.

(o) *Handling machinery.* No one but employees of the United States shall move any lock machinery except as directed by the lockmaster. Tampering or meddling with the machinery or other parts of the lock is strictly forbidden.

(p) *Refuse in locks.* Placing or discharging refuse of any description into the lock, on lock walls or esplanade, canal or canal bank is prohibited.

(q) *Damage to locks or other work.* To avoid damage to plant and structures connected with the construction or repair of locks and dams, vessels passing structures in the process of construction or repair shall reduce their speed and navigate with special caution while in the vicinity of such work. The restrictions and admonitions contained in these regulations shall not affect the liability of the owners and operators of floating craft for any damage to locks or other structures caused by the operation of such craft.

(r) *Trespass of lock property.* Trespass on locks or dams or other United States property pertaining to the locks or dams is strictly prohibited except in those areas specifically permitted. Parties committing any injury to the locks or dams or to any part thereof will be responsible therefor. Any person committing a willful injury to any United States property will be prosecuted. No

fishing will be permitted from lock walls, guide walls, or guard walls of any lock or from any dam, except in areas designated and posted by the responsible District Engineer as fishing areas. Personnel from commercial and recreational craft will be allowed on the lock structure for legitimate business reasons; e.g., crew changes, emergency phone calls, etc.

(s) *Restricted areas at locks and dams.* All waters immediately above and below each dam, as posted by the respective District Engineers, are hereby designated as restricted areas. No vessel or other floating craft shall enter any such restricted area at any time. The limits of the restricted areas at each dam will be determined by the responsible District Engineer and market by signs and/or flashing red lights installed in conspicuous and appropriate places.

(t) *Statistical information.* (1) Masters of vessels shall furnish to the lockmaster such statistics of passengers or cargo as may be requested.

(2) The owners or masters of vessels sunk in the navigable waters of the United States shall provide the appropriate District Engineer with a copy of the sunken vessel report furnished to the U.S. Coast Guard Marine Inspection Office in accordance with Code of Federal Regulations Title 33 Subpart 64.10-1.

(u) *Operations during high water and floods in designated vulnerable areas.* Vessels operating on these waters during periods when river stages exceed the level of "ordinary high water," as designated on Corps of Engineers' navigation charts, shall exercise reasonable care to minimize the effects of their bow waves and propeller washes on river banks; submerged or partially submerged structures or habitations; terrestrial growth such as trees and bushes; and man-made amenities that may be present. Vessels shall operate carefully when passing close to levees and other flood protection works, and shall observe minimum distances from banks which may be prescribed from time to time in Notices to Navigation Interests. Pilots should exercise particular care not to direct propeller wash at river banks, levees, revetments, structures or other appurtenances subject to damage from wave action.

(v) *Navigation lights for use at all locks and dams except on the Kentucky River and Lock 3, Green River.* (1) At locks at all fixed dams and at locks at all movable dams when the dams are up so that there is no navigable pass through the dam, the following navigation lights will be displayed during hours of darkness:

(i) Three green lights visible through an arc of 360° arranged in a vertical line on the upstream end of the river (guard) wall unless the intermediate wall extends farther upstream. In the latter case, the lights will be placed on the upstream end of the intermediate wall.

(ii) Two green lights visible through an arc of 360° arranged in a vertical line on the downstream end of the river (guard) wall unless the intermediate wall extends farther downstream. In the latter case, the lights will be placed on the downstream end of the intermediate wall.

(iii) A single red light, visible through an arc of 360° on each end (upstream and downstream) of the land (guide) wall.

(2) At movable dams when the dam has been lowered or partly lowered so that there is an unobstructed navigable pass through the dam, the navigation lights indicated in the following paragraphs will be displayed during hours of darkness until lock walls and weir piers are awash.

(i) Three red lights visible through an arc of 360° arranged in a vertical line on the upstream end of the river (guard) wall.

(ii) Two red lights visible through an arc of 360° arranged in a vertical line on the downstream end of the river (guard) wall.

(iii) A single red light visible through an arc of 360° on each end (upstream and downstream) of the land (guide) wall.

(3) After lock walls and weir piers are awash they will be marked as prescribed in paragraph (x) of this section.

(4) If one or more bear traps or weirs are open or partially open, and may cause a set in current conditions at the upper approach to the locks, this fact

will be indicated by displaying a white circular disk 5 feet in diameter, on or near the light support on the upstream end of the land (guide) wall during the hours of daylight, and will be indicated during hours of darkness by displaying a white (amber) light vertically under and 5 feet below the red light on the upstream end of the land (guide) wall.

(5) At Locks No. 1 and 2, Green River, when the locks are not in operation because of high river stages, a single red light visible through an arc of 360° will be displayed on each end (upstream and downstream) of the lock river (guard) will at which time the lights referred to above will not be visible.

(w) *Navigation lights for use at locks and dams on the Kentucky River and Lock 3, Green River.* A single red light visible through an arc of 360° shall be displayed during hours of darkness at each end of the river wall or extending guard structures until these structures are awash.

(x) *Buoys at movable dams.* (1) Whenever the river (guard) wall of the lock and any portion of the dam are awash, and until covered by a depth of water equal to the project depth, the limits of the navigable pass through the dam will be marked by buoys located at the upstream and downstream ends of the river (guard) wall, and by a single buoy over the end or ends of the portion or portions of the dam adjacent to the navigable pass over which project depth is not available. A red nun-type buoy will be used for such structures located on the left-hand side (facing downstream) of the river and a black can-type buoy for such structures located on the right-hand side. Buoys will be lighted, if practicable.

(2) Where powerhouses or other substantial structures projecting considerably above the level of the lock wall are located on the river (guard) wall, a single red light located on top of one of these structures may be used instead of river wall buoys prescribed above until these structures are awash, after which they will be marked by a buoy of appropriate type and color (red nun or black can buoy) until covered by a depth of water equal to the project depth. Buoys will be lighted, if practicable.

(y) *Vessels to carry regulations.* A copy of these regulations shall be kept at all times on board each vessel regularly engaged in navigating the rivers to which these regulations apply. Copies may be obtained from any lock office or District Engineer's office on request. Masters of such vessels are encouraged to have on board copies of the current edition of appropriate navigation charts.

NOTES

1. Muskingum River Lock & Dam 1 has been removed. Ohio River slackwater provides navigable channel for recreational craft to Lock 2 near Devola, Ohio. Muskingum River Locks 2 thru 11 inclusive have been transferred to the State of Ohio and are operated during the recreational boating season by the Ohio Department of Natural Resources. Inquiries regarding Muskingum River channel conditions and lock availability should be directed to the aforementioned Department.

2. Little Kanawha River Lock and Dam 1 has been removed, thus permitting recreational craft to navigate up to Lock 2 near Slate, W. Va. Operation of Locks 2 thru 5 on the Little Kanawha River has been discontinued.

3. Big Sandy River: Lock 1 has been removed, thus permitting recreational craft to navigate to Lock 2, near Buchanan, Ky. Operation of Lock 2 and Lock 3 near Fort Gay, W. Va. has been discontinued. Operation of Lock and Dam 1 on Levisa Fork near Gallup, Ky., and Lock and Dam 1 on Tug Fork near Chapman, Ky. has been discontinued.

4. Operation of the following Green River Locks has been discontinued: Lock 4 near Woodbury, Ky., Lock 5 near Glenmore, Ky., and Lock 6 near Brownsville, Ky.

5. Operation of Barren River Lock and Dam No. 1 near Richardsville, Ky. has been discontinued.

6. Operation of Rough River Lock and Dam No. 1 near Hartford, Ky. has been discontinued.

7. Operation of Osage River Lock and Dam 1 near Osage City, Mo., has been discontinued.

8. Operation of the 34 locks in the Illinois and Mississippi (Hennepin) Canal, including the feeder section, has been discontinued.

9. Operation of the Illinois and Michigan Canal has been discontinued.

[40 FR 32121, July 31, 1975]

§ 207.305 Holston River at Holston Ordnance Works, Kingsport, Tennessee; restricted area.

(a) *The area.* That portion of Holston River within the boundaries of the Government reservation.

(b) *The regulations.* (1) Except in cases of extreme emergency, all vessels other than those owned or controlled by the United States Government are prohibited from entering the area without prior permission of the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding Officer of the Holston Ordnance Works, Kingsport, Tennessee, and such agencies as he may designate.

[20 FR 7075, Sept. 30, 1955]

§ 207.306 Missouri River; administration and navigation.

(a) [Reserved]

(b) *General.* The regulations in this section shall implement those contained in paragraph(s) of § 207.300.

[33 FR 17242, Nov. 21, 1968; 42 FR 57962, Nov. 7, 1977]

§ 207.310 Mississippi River at Keokuk, Iowa; operation of power dam by Mississippi River Power Co.

(a) All previous regulations of the Secretary of War relating to the use of the Mississippi River for the generation of power by the Mississippi River Power Co., including the memorandum of March 24, 1908, approved by the Secretary of War, March 26, 1908, are rescinded, and the following regulations will govern the operation of the dam until further orders:

(b) Excepting as specially provided in this section the normal flow of the river shall be discharged below the dam at all times of day and night.

(c) The Mississippi River Power Co. shall not during the period of navigation raise the level of its pond behind the Keokuk Dam when the natural flow of the Mississippi River is falling or when such natural flow is less than approximately 64,000 cubic feet per second, which corresponds to a normal stage of 6 feet above low water at Keokuk, Iowa, except upon the written permission of the United States District Engineer in charge of this locality, such permit to state the period which such ponding may cover and the maximum variation in stage below the dam which may be caused by each ponding.

(d) The granting of permits by the District Engineer shall be governed by the provision of the law authorizing the construction of the dam and its accessories, as follows:

SEC. 2. That the withdrawal of water from the Mississippi River and the discharge of water into the said river, for the purpose of operating the said power stations and appurtenant works, shall be under the direction and control of the Secretary of War, and shall at no time be such as to impede or interfere with the safe and convenient navigation of the said river by means of steamboats or other vessels or by rafts or barges. * * * (33 Stat. 713)

(e) The power company when proposing to raise or lower the pond, either under general authority or special permission, shall give due notice to the District Engineer or his authorized agent of its intention.

(f) The power company shall hold all records relating to operations affecting the river discharge open to the inspection of the District Engineer or his authorized agent.

(g) It shall be the duty of the district engineer or his authorized agent to observe closely and carefully the operations of the power company and to maintain in addition to such as may be maintained by the power company, such river and pool gages as may be advisable, and make from time to time such examinations as may be necessary for determining the effect of the operation of the power dam and accessories on the river channels.

(h) The Department of the Army approves the method of regulating the flow below the Keokuk Dam by estimating the flow 24 hours in advance and maintenance of the stage corresponding to such flow as indicated by the river gage at United States Lock (the method employed during 1917). The general rules stated in paragraph (g) of this section are not intended to apply to unavoidable small compensating variations in pond level behind the dam inherent in such method of regulation.

[Regs., Jan. 12, 1918]

§ 207.320 Mississippi River, Twin City Locks and Dam, St. Paul and Minneapolis, Minn.; pool level.

In accordance with the provisions of Article 8 of Federal Power Commission License of June 7, 1923 (Project No. 362-Minn., Ford Motor Co.), this section is prescribed for the control of the pool level created by the Twin City Locks and Dam, Minneapolis, in the interest of navigation, and supersedes rules and regulations made effective January 1, 1928, by the Secretary of War:

(a) The pool above the dam shall not be allowed to drop below elevation 744.5 (Cairo datum), except after loss or lowering of flashboards and before replacement or raising of same, during the navigation season; nor below elevation 743.3 during the period when the river is closed to navigation. The variation of pool level shall not exceed 0.5 foot per day whenever the pool is below elevation 745.5, and in addition, during the period when the river is closed to navigation, the maximum rate of such variation shall not exceed 0.1 foot per hour; except that during the navigation season, increases in pool level at rates greater than that specified may be made to eliminate wasting of water during an increase in river flow.

(b) Whenever, due to high flows, the pool above the dam is above elevation 746.5, all flashboards on the crest of the dam shall be removed or in the lowered position.

(c) To protect navigation in cases of emergency, such as the stranding of a boat or the loss of a pool below the Twin City Dam, etc., the licensee shall temporarily discharge water at such rates, subject to the limitations of paragraph (a) of this section, as may be directed by the United States District Engineer in charge of the locality.

(d) It shall be the duty of the United States District Engineer in charge of the locality to notify the licensee of the periods during which the river shall be considered open to navigation.

(e) It shall be the further duty of the said District Engineer or his authorized agent, by frequent inspections, to determine whether paragraphs (a) to (d) of this section are being observed. In case of noncompliance he shall so notify the licensee and report the facts to the Chief of Engineers.

[Regs., Feb. 24, 1938]

§ 207.330 Mississippi River between Winnibigoshish and Pokegama dams, Leech River between outlet of Leech Lake and Mississippi River, and Pokegama reservoir; logging.

(a) Parties engaged in the transportation of loose logs, timbers, and rafts of logs, poles, posts, ties, or pulpwood, on the waters described in this section, shall conduct their operations so as to interfere as little as possible with navigation by steamboats, launches, or other craft, or with the operations of other parties using the waters for purposes similar to their own, and, so far as may be possible, shall prevent the formation of log jams.

(b) In case of the formation of a jam, the owner of the logs, poles, posts, ties, or pulpwood, causing the jam, or the representatives in charge of the drive or tow, shall cause the same to be broken with the least practicable delay.

(c) Steamboats, launches, or other craft desiring to pass through a body of floating logs, poles, or ties shall be given all reasonable and necessary assistance in doing so by the representatives in charge of the logs, poles, posts, ties, or pulpwood causing the obstruction.

(d) Any individual, firm, or corporation banking logs, poles, posts, ties, or pulpwood on the shores or within the banks of any of the waters covered by this section, which are to be transported during the navigation season, shall so place them as to maintain a clear navigable channel width of not less than 20 feet.

(e) Parties using the river for rafted poles, posts, ties, or pulpwood shall not tie rafts up to the bank two or more abreast; shall not tie up where there will be less than 50 feet of clear waterway between their raft and the other bank or between their raft and another tied to the opposite bank; and shall not tie more than three rafts

along any bank without leaving an opening for a landing.

[Regs., Mar. 5, 1915]

§ 207.340 Reservoirs at headwaters of the Mississippi River; use and administration.

(a) *Description.* These reservoirs include Winnibigoshish, Leech Lake, Pokegama, Sandy Lake, Pine River and Gull Lake.

(b) *Penalties.* The River and Harbor Act approved August 11, 1888 (25 Stat. 419, 33 U.S.C. 601) includes the following provisions as to the administration of the headwater reservoirs:

> And it shall be the duty of the Secretary of War to prescribe such rules and regulations in respect to the use and administration of said reservoirs as, in his judgment, the public interest and necessity may require; which rules and regulations shall be posted in some conspicuous place or places for the information of the public. And any person knowingly and willfully violating such rules and regulations shall be liable to a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, the same to be enforced by prosecution in any district court of the United States within whose territorial jurisdiction such offense may have been committed.

(c) *Previous regulations now revoked.* In accordance with the above act, the Secretary of War prescribed regulations for the use and administration of the reservoirs at the headwaters of the Mississippi River under date of February 11, 1931, which together with all subsequent amendments are hereby revoked and the following substituted therefor.

(d) *Authority of officer in charge of the reservoirs.* The accumulation of water in, and discharge of water from the reservoirs, including that from one reservoir to another, shall be under the direction of the U.S. District Engineer, St. Paul, Minnesota, and of his authorized agents subject to the following restrictions and considerations:

(1) Notwithstanding any other provision of this section, the discharge from any reservoir may be varied at any time as required to permit inspection of, or repairs to, the dams, dikes or their appurtenances, or to prevent damage to lands or structures above or below the dams.

(2) Except as provided in paragraph (d)(1) of this section the average annual discharge from the respective reservoirs shall not be reduced below the following values, as nearly as they can practically be maintained:

Winnibigoshish, 150 cubic feet per second.
Leech Lake, 70 cubic feet per second.
Pokegama, 200 cubic feet per second.
Sandy Lake, 80 cubic feet per second.
Pine River, 90 cubic feet per second.
Gull Lake, 30 cubic feet per second.

(3) During the season of navigation on the upper Mississippi River, the volume of water discharged from the reservoirs shall be so regulated by the officer in charge as to maintain as nearly as practicable, until navigation closes, a sufficient stage of water in the navigable reaches of the upper Mississippi and in those of any tributary thereto that may be navigated and on which a reservoir is located.

(4) Surplus waters in storage above the stages listed in paragraph (d)(7) of this section not required for use in the aid of navigation, as provided for in paragraph (d)(3) of this section, may be discharged at such time and at such rates as will result, in the judgment of the District Engineer, in the greatest general benefit or the minimum of injuries to all affected interests.

(5) No discharge other than the minimum specified in paragraph (d)(2) of this section shall be permitted when a reservoir is at or below its minimum stage as set forth in paragraph (d)(7) of this section except such increases of discharge as may specifically be directed by the Chief of Engineers.

(6) The surplus inflow over the minimum discharge set forth in paragraph (d)(2) of this section shall be stored until the limit of capacity or safety of the reservoir is reached, or until such time as water may be discharged in accordance with this section.

(7) So far as practicable, under the requirements of this section, the officer in charge will cause the reservoirs to be maintained above the following minimum stages, referred to zeros of respective Government gauges:

Winnebigoshish	6.0
Leech Lake	0.0
Pokegama	6.0
Sandy Lake	7.0

Pine River	9.0
Gull Lake	5.0

The range of fluctuations in levels in any reservoir in a single calendar year shall be held at a minimum consistent with the requirements of this section and with the inflow of that year. If, through necessity reservoirs are drawn below these stages, minimum stages will be restored at the first practicable opportunity.

(e) *Passage of logs and other floating bodies.* Logs and other floating bodies may be sluiced or locked through the dams, but prior authority for the sluicing of logs must be obtained from the District Engineer when this operation necessitates a material change in discharge.

(f) *Obstructions to flow of water.* No person shall place floating bodies in a stream or pond above or below a reservoir dam when, in the opinion of the officer in charge, such act would prevent the necessary flow of water to or from such dam, or in any way injure the dam and its appurtenances, its dikes and embankments; and should floating bodies lying above or below a dam constitute at any time an obstruction or menace as beforesaid, the owners of said floating bodies will be required to remove them immediately.

(g) *Trespass.* No one shall trespass on any reservoir dam, dike, embankment or upon any property pertaining thereto.

[Regs., Feb. 4, 1936, as amended at 10 FR 414, Jan. 10, 1945]

§ 207.350 St. Croix River, Wis. and Minn.

(a) *Logging regulations for river above Lake St. Croix.* (1) During the season of navigation from May 1 to September 30, the full natural run of water in the river shall be permitted to flow between 1 a.m. on Thursday and 4 p.m. on Sunday of each week, and during the time between 1 p.m. on Wednesday and 4 p.m. on Sunday of each week no logs shall be sluiced into the river between St. Croix Falls, Wis., and Stillwater, Minn.

(2) Except during the period above mentioned, the parties engaged in handling logs upon the river shall have the right to sluice, drive, and float loose logs and to regulate the flow of water in the river as may best suit their convenience, all reasonable caution being taken to avoid log jams.

(3) This paragraph shall remain in force until modified or rescinded. (Act of May 9, 1900, 31 Stat. 172; 33 U.S.C. 410)

(b) *Power dam at Taylors Falls.* (1) That between April 1 and October 31, whenever the natural river flow exceeds 1,600 feet per second, the reduced flow shall be not less than 1,600 feet per second, and that whenever the natural flow be less than 1,600 feet per second, then the reduced flow shall not be less than such natural flow: *Provided,* That the District Engineer in charge of the locality may vary these requirements temporarily, as the interests of navigation, in his judgment, require, prompt report of his action in such instances to be made to the Chief of Engineers.

(2) The Northern States Power Co. shall establish automatic water-stage recorders of a type approved by the district engineer at the following localities:

(i) On the Nevers Pond near the dam.

(ii) On the St. Croix hydroplant pond near the dam.

(iii) On the St. Croix hydroplant tailrace.

(iv) On the St. Croix River near Osceola.

(v) On the St. Croix River near Marine.

(3) The gages are to be installed and maintained by the Northern States Power Co. in a manner satisfactory to the District Engineer, but their operation and inspection is to be under the sole direction of the District Engineer, who will retain the original records, furnishing the Northern States Power Co. with duplicates of the gage records.

[Regs., Apr. 20, 1907, Apr. 10, 1931, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.360 Rainy River, Minn.; logging regulations for portions of river within jurisdiction of the United States.

(a) During the season of navigation, parties engaged in handling logs upon such portion of the river shall have

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the right to sluice, drive, and float logs in such manner as may best suit their convenience: *Provided,* A sufficient channel for safe navigation by boats is maintained between 7:00 a.m. and 11:00 p.m. from the opening of navigation to September 15th; between 8:00 a.m. and 11:00 p.m. from September 16th to October 31st; and between 9:00 a.m. and 11:00 p.m. from November 1st to the close of navigation.

(b) Owners of loose logs running in the river must maintain a sufficient force of men on the river to keep the logs in motion and to prevent the formation of log jams or accumulation of logs on the several rapids; and said log owners must also construct and maintain for the control and direction of floating logs, such guide booms on said rapids and at other points on said river, as may be considered necessary by the District Engineer in charge of the District.

(c) Owners of sack and brail rafts must so handle the same as not to interfere with the general navigation of the river or with the approaches to regular boat landings.

[Regs., Nov. 6, 1935, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.370 Big Fork River, Minn.; logging.

(a) During the season of navigation, parties engaged in handling logs upon the river shall have the right to sluice, drive, and float logs in such manner as may best suit their convenience: *Provided,* A sufficient channel is maintained at all times for the navigation of steamboats, flatboats, and other small craft.

(b) A sufficient force of men must accompany each log drive to prevent the formation of log jams and to maintain an open channel for navigation.

(c) This section shall remain in force until modified or rescinded.

[Regs., Feb. 24, 1905]

§ 207.380 Red Lake River, Minn.; logging regulations for portion of river above Thief River Falls.

(a) Parties wishing to run logs on Red Lake River must provide storage booms near the head of the river to take care of said logs.

(b) No one will be permitted to turn into the river at any time more logs than he can receive at his storage boom.

(c) Tows arriving at the head of the river shall turn their logs into the river successively in the order of their arrival, and such logs shall be at once driven to the owner's storage boom.

(d) Parties authorized to run logs on the river shall have the use of the river on successive days in rotation to run their logs from their storage boom down, but not more than 1,000,000 feet, board measure, shall be released from the storage booms on any one day. Said parties must provide a sufficient force of log drivers to keep their logs in motion throughout the section of river above mentioned, so as to avoid obstructing the general navigation of the river.

(e) When a drive is made it shall be so conducted that not more than 1,500,000 feet, board measure, of logs shall pass any point on the river in 24 hours. The decision of the agent appointed by the United States shall be final as to the quantity of logs running at any time.

(f) This section shall remain in force until modified or rescinded.

[Regs., Feb. 24, 1905]

§ 207.390 The Great Lakes; waterborne commerce statistics.

(a) Owners, agents, masters, and clerks of vessels and other craft plying the Great Lakes and individuals and corporations engaging in transporting their goods upon the Great Lakes, shall hereafter furnish statements relative to vessels, passengers, freight, and tonnage in the manner and at such times as prescribed in this section.

(1) Vessels operated on the Great Lakes are classified according to the nature of their operations, and movements of those in each class will be reported upon on forms furnished by the Corps of Engineers, Department of the Army, as follows:

(i) *Class 1.* Vessels operating as contract or private carriers, or combinations of these, except those engaged in fishing, sand and gravel dredging, railroad car ferrying, general and auto-

mobile ferrying, and common carrier package freighting and/or passenger carrying, shall be reported, upon or shortly after their arrival at any port or locality, whether carrying cargoes or moving light or in ballast. Each movement will be numbered beginning with No. 1 in each calendar year.

(*a*) Traffic Form 1 (post card) will be used when a vessel of Class 1 moves from one port or locality to another port or locality, and carries but one commodity, or is light or ballasted.

(*b*) Traffic Form 2 (sheet form) will be used when a vessel of Class 1 loads a unit or mixed cargo at several ports or localities, and discharges the same at one or more ports or localities. Reports must be made so that the movement of each commodity between ports can be traced. These reports will be mailed in the envelopes provided therefor.

(ii) *Class 2.* This includes vessels operating as common carriers in regularly established freight and/or passenger traffic between specified ports. Reports will be made on Traffic Form 3, monthly or at other periods, as per arrangements made with the U.S. District Engineer office in whose district the operating headquarters of the transportation line making such report is located.

(iii) *Class 3.* This includes vessels engaged in fishing on the Great Lakes or tributary waters, the dredging and the movement of sand and gravel, railroad car ferrying, and general and automobile ferrying. Reports on the movements and business done by this class of carrier will be made as required by the several District Engineer offices on the Great Lakes.

(b) In case any owner or operator of a vessel or vessels has not been contacted with respect to reporting his activities, any one of the Engineer offices listed below should be notified:

Buffalo, N.Y.
Detroit, Mich.
St. Paul, Minn.
Chicago, Ill.

or The Division Engineer, U.S. Army Engineer Division, North Central, 536 South Clark Street, Chicago 5, Illinois.

[Regs., May 14, 1938]

§ 207.400 Duluth-Superior Harbor, Minn., and Wis.; use, administration, and navigation, and bridge regulations.

(a) (1)—(2) [Reserved]

(3) *Rafts.* Before a raft may be towed through any of the entrances, channels, or basins of the Duluth-Superior Harbor application shall be made to the District Engineer of the Engineer Department in charge of the locality for specific permission and instructions.

[18 FR 1727, Mar. 27, 1953, as amended at 25 FR 9890, Oct. 15, 1960; 27 FR 3852, Apr. 21, 1962; 42 FR 57962, Nov. 7, 1977]

§ 207.410 Keweenaw Waterway, Mich.; use, administration, and navigation.

(a)—(b) [Reserved]

(c) *Rafts.* Passage into or through the waterway or "bag" or "sack" rafts or of loose logs is prohibited. Rafts shall not exceed 100 feet in width or 800 feet in length and shall, in all cases, be handled by sufficient tug power to guide the raft so as to give one-half of the channel to passing vessels.

[13 FR 5058, Aug. 31, 1948; 42 FR 57962, Nov. 7, 1977]

§ 207.420 Chicago River, Ill.; Sanitary District controlling works, and the use, administration, and navigation of the lock at the mouth of river, Chicago Harbor.

(a) *Controlling works.* The controlling works shall be so operated that the water level in the Chicago River will be maintained at a level lower than that of the lake, except in times of excessive storm run-off into the river or when the level of the lake is below minus 2 feet, Chicago City Datum.

(1) The elevation to be maintained in the Chicago River at the west end of the lock will be determined from time to time by the U.S. District Engineer, Chicago, Illinois. It shall at no time be higher than minus 0.5 foot, Chicago City Datum, and at no time lower than minus 2.0 feet, Chicago City Datum, except as noted in the preceding paragraph.

(b) Lock—(1) *Operation.* The lock shall be operated by the Metropolitan

Sanitary District of Chicago under the general supervision of the U.S. District Engineer, Chicago, Illinois. The lock gates shall be kept in the closed position at all times except for the passage of navigation.

(2) *Description of lock.*

	Feet
Clear length	600
Clear width	80
Depth over sills	[1]24.4

[1]This depth is below Chicago City Datum which is the zero of the gages mounted on the lock. The clear depth below Low Water Datum for Lake Michigan, which is the plane of reference for U. S. Lake Survey Charts, is 23.0 feet.

The east end of the northeast guide wall shall be marked by an intermittent red light, and by a traffic light showing a fixed red or fixed green light. The west end of the northwest gate block shall be marked by a traffic light showing a fixed red or fixed green light. The east end of the southeast guide wall and the west end of the southwest guide wall shall be marked by an intermittent white light.

(3) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants.

(4) *Signals.* (i) Signals from vessels for lockage shall be by whistle, horn or by idling or standing near the ends of the lock guide walls. Signals from the lockmaster shall be by the traffic light and horn and/or by voice with or without electrical amplification. In case of emergency, the lockmaster may signal the vessel by wave of hand or lantern, and the signals thus given shall have the same weight as though given by visual or sound devices at the lock. Vessels must approach the lock with caution and shall not enter or leave the lock until signaled to do so by the lockmaster. The following lockage signals and duration of sound signals are prescribed. A long blast shall be of 4 second duration; a short blast shall be of 1 second duration.

(*a*) *Vessel signals.* Inbound vessels at a distance of not more than 4,000 feet from the lock and outbound vessels immediately after crossing under the Lake Shore Drive bridge shall signal for lockage by 2 long and 2 short blasts of a whistle or horn.

(*b*) *Lock signals.* (*1*) When the lock is ready for entrance, the traffic light will show green, and vessels under 500 gross tons shall come ahead under caution and enter the lock; vessels of 500 gross tons or more shall come to a stop along the guide wall, as prescribed in paragraph (b)(5) of this section. Should the traffic light be out of order or be invisible due to thick weather, vessels shall upon 1 long blast of the lock horn approach and moor to the south guide wall or continue into the lock if so directed by the lockmaster.

(*2*) When the lock is not ready for entrance, the traffic light will show red, and vessels shall not pass beyond the end of the south guide wall: *Provided, however,* That vessels may approach and moor to said wall if authorized by 1 long blast of the lock horn.

(*3*) Permission to leave the lock shall be indicated by 1 short blast of the lock horn.

(*4*) Caution or danger will be indicated by 4 or more flashes of the red traffic light or 4 or more short blasts of the lock horn delivered in rapid succession.

(ii) When in the lock, vessels shall not blow whistle signals for tugs, bridges, landings, etc., without the lockmaster's permission.

(iii) The master and chief engineer of each vessel of 500 gross tons or more shall be on duty at their respective stations when passing through the lock.

(5) *Stop before entering.* All vessels or tows of 500 gross tons or more shall come to a full stop at the point indicated by the sign reading "Stop" on

the south guide wall and shall not proceed into the lock until so directed by the lockmaster.

(6) *Maximum draft.* Vessels drawing within 6 inches of the depth over the sills shall not be permitted lockage except under special permission from the lockmaster.

(7) *Precedence at locks.* The vessel arriving first at a lock shall be first to lock through; but precedence shall be given to vessels belonging to the United States and to commercial vessels in the order named. Arrival posts or markers may be established ashore above or below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

(8) *Lockage of pleasure boats.* The lockage of pleasure boats, house boats or like craft shall be expedited by locking them through with commercial craft (other than barges carrying petroleum products or highly hazardous materials) in order to utilize the capacity of the lock to its maximum. If, after the arrival of such craft, no separate or combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockage shall be made.

(9) *Speed of approach and departure.* Vessels of 500 gross tons or more when approaching the lock shall navigate at a speed not exceeding 2 miles per hour, and when leaving the lock shall navigate at a speed not exceeding 6 miles per hour. While entering or leaving the lock, the propellers of vessels of 500 gross tons or more shall be operated at slow speed so as not to undermine or injure the concrete paving on the bottom of the lock chamber. Tugs assisting vessels in lockage, and Coast Guard and fire vessels, may navigate at a higher speed when authorized by the lockmaster. Vessels of less than 500 gross tons shall operate at reasonable speed.

(10) *Mooring.* (i) Vessels shall be moored in the lock or along its approach walls in such manner as may be directed by the lockmaster. Tying to lock ladders, lamp standards, or railings is strictly prohibited. Commercial vessels and tows of 500 gross tons or more shall, in general, have at least one line out when entering the lock and shall be moored in the lock with two bow and two stern lines, which shall lead forward and aft at each end of the vessel or tow. When the gates are closed, commercial vessels shall not be permitted to work their wheels. Said vessels shall have at least two seamen ashore to handle the mooring lines while they are in the lock.

(ii) Mooring lines shall not be cast off until after the lock gates have been opened fully into their recesses, and the signal given to leave the lock. The lines leading aft shall be released first. The lines leading forward shall not be released until the vessel has started to move forward, so as to prevent the vessel from drifting back into the lock gates.

(11) [Reserved]

(12) *Unnecessary delay at lock.* Masters and pilots must use every precaution to prevent unnecessary delay in entering of leaving the lock. Vessels failing to enter lock with reasonable promptness, when signaled to do so, shall lose their turn. Vessels arriving at the lock with their tows in such shape so as to impede lockage, shall lose their turn.

(13) *Depositing refuse prohibited.* The depositing of ashes or refuse matter of any kind in the lock; the passing of coal from barges or flats while in the lock; and the emission of dense smoke from any vessel while passing through the lock, is forbidden.

(14) *Vessels denied lockage.* The lockmaster may deny the privilege of passage through the lock to any vessel with sharp or rough projecting surfaces of any kind, or overhanging rigging, or any vessel which is badly leaking or in a sinking condition.

(15) *Fenders.* All barges and oil tankers must be provided with suitable nonmetallic fenders so as to eliminate damage to the lock or approach walls and reduce fire hazard. Said fenders shall be used as may be directed by the lockmaster.

(16) *Operating machinery.* Lock employees only shall be permitted to operate the lock gates, valves, signals or other appliances. Tampering or meddling with machinery or other parts of the lock is strictly forbidden.

(17) *Commercial statistics.* Upon each passage through the lock the master or member of the crew of each vessel shall furnish the lockmaster such statistical information as may be required.

(18) *Vessels to carry regulations.* A copy of the regulations in this section shall be kept at all times on board each vessel regularly engaged in navigating this lock. Copies may be obtained without charge from the lockmaster.

(19) *Failure to comply with regulations.* Any vessel failing to comply with this section or any orders given in pursuance thereof, may in the discretion of the lockmaster be denied the privilege of passage through or other use of the lock or appurtenant structures.

[3 FR 2139, Sept. 1, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 26 FR 354, Jan. 18, 1961; 44 FR 67657, Nov. 27, 1979]

§ 207.425 Calumet River, Illinois: Thomas J. O'Brien Lock and Controlling Works and the use, administration and navigation of the lock.

(a) *Controlling Works.* (1) The controlling works shall be so operated that the water level at the downstream end of the lock will be maintained at a level lower than that of Lake Michigan, except in times of excessive storm run-off into the Illinois Waterway, or when the lake level is below minus 2 feet, Chicago City Datum.

(2) The elevation to be maintained at the downstream end of the lock shall at no time be higher than minus 0.5 feet, Chicago City Datum, and at no time lower than minus 2.0 feet, Chicago City Datum, except as noted in paragraph (a)(1) of this section.

(b) *Lock—(1) Operation.* The Thomas J. O'Brien Lock and Dam is part of the Illinois Waterway which is a tributary of the Mississippi River. All rules and regulations defined in § 207.300, Ohio River, Mississippi River above Cairo, Illinois, and their tributaries; use, administration and navigation shall apply.

[40 FR 57358, Dec. 9, 1975]

§ 207.440 St. Marys Falls Canal and Locks, Mich.; use, administration, and navigation.

(a) The use, administration, and navigation of the canal and canal grounds shall be under the direction of the District Engineer, Engineer Department at Large, in charge of the locality, and his authorized agents. The term "canal" shall include all of the natural waters of the St. Marys River on the United States side of the International Boundary and all of the canalized waterway and the locks therein between the western or upstream limit, which is a north and south line tangent to the west end of the Northwest Pier, and the eastern or downstream limit, which is a north and south line tangent to the northeast corner of the old Fort Brady Reservation, the distance between limits being 1.9 miles. The term "canal grounds" shall include all of the United States part and other lands, piers, buildings, water level regulation works, hydroelectric power plant, and other appurtenances acquired or constructed for the channel improvement and use of the waterway.

NOTE: Rules and regulations governing the movements of vessels and rafts in St. Marys River from Point Iroquois, on Lake Superior, to Point Detour, on Lake Huron, prescribed by the United States Coast Guard pursuant to 33 U.S.C. 475, are contained in Part 92 of this title.

(b) Masters of all registered vessels approaching and desiring to use the locks shall, upon arriving at Sailors Encampment, Little Rapids Cut, and Brush Point, report the name of the vessel and its draft to the Coast Guard Lookout Stations at those points.

(c) Upon approaching the canal, vessel masters shall request lock dispatch by radiotelephone to the Corps of Engineers Chief Lockmaster at St. Marys Falls Canal dispatch tower (Radio Call WUD-31). Every upbound vessel shall call when abeam of Bayfield Rock Pile Dike which is approximately one and one-eighth miles downstream from East Center Pier end. Every downbound vessel shall call when approximately one-half mile downstream from Big Point.

(d) When in the locks, vessels shall not blow whistle signals for tugs,

supply vessels, or persons unless authorized to do so by the District Engineer or his authorized agents.

(e) On all vessels of 400 gross tons or over navigating the canal under their own power, there shall be on duty the following ship's officers: In the pilot house, on the bridge, or in the immediate vicinity thereof, the master, one mate, and one wheelsman; in the engine room, the chief engineer, one assistant engineer, and one oiler or other member of the crew familiar with the operation of the engine. During transit of the locks, all vessels of 400 gross tons or over equipped with power operated mooring deck winches shall have, in addition to the winch operators, mates or signalmen at the forward and after ends of the vessel to direct operations from points providing maximum vision of both the winch operators and canal linesmen.

(f) Within the limits of the canal, vessels approaching the locks shall not navigate at a speed greater than 2½ miles per hour, and vessels leaving the locks shall not navigate at a speed greater than 6 miles per hour. Tugs assisting vessels in passing the locks may be authorized by the District Engineer or his authorized agents to navigate at a higher speed when considered necessary to expedite canal operations.

(g) For passage through the canal, vessels or boats owned or operated by the United States Government may be given precedence over all others.

(h) All registered vessels will be passed through the locks in the order of their arrival at the canal, unless otherwise directed by the District Engineer or his authorized agents. When a vessel that has stopped on its own business is ready to proceed, it is not entitled to precedence over other vessels already dispatched even though it may have preceded such vessels in arriving at any Coast Guard Lookout Station. Unregistered craft must have a special permit for separate lockage.

(i) Unless otherwise directed, all vessels or boats approaching the locks shall stop at the points indicated by signs placed on the canal piers until ordered by the District Engineer or his authorized agents to proceed into the lock.

(j) Vessels and boats shall not proceed to enter or leave a lock until the lock gates are fully in their recesses and the lockmaster has given directions for starting.

(k) Upon each passage through the canal, the master or clerk of the vessel or craft shall report to the canal office, upon the prescribed form, a statement of passengers, freight, and registered tonnage, and such other statistical information as may be required by the blank forms provided for the purpose.

(l) No business, trading, or loading or landing of freight, baggage, or passengers will be allowed on or over the canal piers or lock walls, or over the other piers within the limits of the canal grounds, except by prior authority of the District Engineer or his authorized agents.

(m) No person shall throw material of any kind into the canal, or litter the grounds with any refuse.

(n) The releasing of vessel steam, water, or waste from side discharge openings upon the piers or lock walls, the cleaning of boiler flues in the locks or canal, or the emission of dense smoke from the stack of any vessel while passing through the locks, is forbidden.

(o) No person shall enter or navigate the canal with a boat or other craft which, when entering or while navigating the canal, shall have an iron or irons projecting from it or a rough surface or surfaces on it which would be liable to damage the lock walls or canal piers.

(p) No person shall cause or permit any vessel or boat of which he is in charge or on which he is employed to in any way obstruct the canal or delay in passing through it, except upon prior authority of the District Engineer or his authorized agents.

(q) No person shall enter upon any part of the canal grounds except as permitted, either generally or in specific instances, by the District Engineer or his authorized agents. No person shall willfully or carelessly injure, tamper with, or damage the canal or any of the Government buildings, works or structures, trees or shrubbery, or other public property

pertaining to the canal or canal grounds.

(r) All barges or other vessels navigating within the canal and not operated under their own power, whether approaching or leaving the locks, are required to be assisted by one or more tugs of sufficient power to insure full control at all times.

(s) Smoking and open flames are prohibited on the canal grounds within 50 feet of any tanker transiting the canal and locks, and on board the tanker transiting the locks except in such places as may be designated in the ship's regulations.

(t) All oil tankers, barges, and other vessels which are used for transporting inflammable liquids, either with or without cargo, shall, if not equipped with fixed timber fenders, be prevented from contacting any unfendered pier, lock wall, or other structure by an adequate number of suitable fenders of timber, rubber, or rope placed between the vessel and such unfendered structure.

(u) The locks will be opened and closed to navigation each year as provided in paragraphs (u) (1) and (2) of this section except as may be authorized by the Division Engineer. Consideration will be given to change in these dates in an emergency involving disaster to a vessel or other extraordinary circumstances. However, if requested by the using interests on or before November 1, the closing date may be extended to meet reasonable demands of commerce to the extent that weather and ice conditions permit.

(1) *Opening date.* At least one lock will be placed in operation for the passage of vessels on April 1. Thereafter, additional locks will be placed in operation as traffic density demands.

(2) *Closing date.* The locks will be maintained in operation only for the passage of downbound vessels departing from a Lake Superior Port before midnight of December 14, and of upbound vessels passing Detour before midnight of December 15. Vessel owners are requested to report in advance to the Engineer in charge at Sault Ste. Marie, the name of vessel and time of departure from a Lake Superior Port on December 14, before midnight, and of vessels passing Detour on December 15 before midnight, which may necessitate the continued operation of a lock to permit passage of vessel.

(v) The maximum overall dimensions of vessels that will be permitted to transit MacArthur Lock are 730 feet in length and 75 feet in width, except as provided in paragraph (v)(1) of this section. Further, any vessel of greater length than 600 feet must be equipped with deck winches adequate to safely control the vessel in the lock under all conditions including that of power failure.

(1) Whenever the Poe Lock is out of service for a period exceeding 24 hours the District Engineer may allow vessels greater than 730 feet in length, but not exceeding 767 feet in length to navigate the MacArthur Lock. Masters of vessels exceeding 730 feet in length shall be required to adhere to special handling procedures as prescribed by the District Engineer.

(w) The maximum overall dimensions of vessels that will be permitted to transit the New Poe Lock without special restrictions are 100 feet in width, including fendering, and 1,000 feet in length, including steering poles or other projections. Vessels having overall widths of over 100 feet and not over 105 feet including fendering, and overall lengths of not more than 1,100 feet, including projections, will be permitted to transit the New Poe Lock at such times as determined by the District Engineer or his authorized representative that they will not unduly delay the transit of vessels of lesser dimensions, or endanger the lock structure because of wind, ice, or other adverse conditions. These vessels also will be subject to such special handling requirements as may be found necessary by the Area Engineer at time of transit. Vessels over 1,000 feet in length will be required to be equipped with six mooring cables and winches ready for use to assist in safe transit of the lock.

(x) Masters or other persons refusing to comply with the regulations in this section or any orders given in pursuance thereof, or using profane, indecent, or abusive language, may, in the discretion of the District Engineer or

his authorized agents, be denied the privileges of the locks and canal grounds.

[Regs., February 25, 1975; April 14, 1975] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[10 FR 14451, Nov. 27, 1945, as amended at 21 FR 8285, Oct. 30, 1956; 22 FR 401, Jan. 19, 1957; 22 FR 864, Feb. 12, 1957; 31 FR 4346, Mar. 12, 1966; 34 FR 18458, Nov. 20, 1969; 40 FR 20818, May 13, 1975; 42 FR 6582, Feb. 3, 1977; 42 FR 12172, Mar. 3, 1977]

§ 207.441 St. Marys Falls Canal and Locks, Mich.; security.

(a) *Purpose and scope of the regulations.* The regulations in this section are prescribed as protective measures. They supplement the general regulations contained in § 207.440 the provisions of which shall remain in full force and effect except as modified by this section.

(b) *Restrictions on transit of vessels.* The following classes of vessels will not be permitted to transit the United States locks or enter any of the United States approach canals:

(1)-(3) [Reserved]

(4) All oil tankers having draft and beam permitting transit through the Canadian lock; those having too great a draft or beam to transit the Canadian lock may continue to use the United States locks. Tankers using the United States locks will not be transited through the MacArthur Lock unless their drafts make it necessary. All tanker transits shall be in single lockages. While in the lock area, smoking by personnel aboard tankers is prohibited in any part of the vessel regardless of locations.

(5) All vessels carrying explosives.

(c) *Personnel restrictions.* Masters of vessels are responsible for the conduct of crew and passengers while transiting St. Marys Falls Canal and Locks and for strict compliance with the regulations. The following procedures are established for the control of persons embarking or debarking from vessels while transiting the locks:

(1) The master or mate and not more than three deckhands will be permitted to go ashore from transiting vessels and then only for normal operations and business incident to the transit. A maximum of four men will be permitted ashore at any one time from any one ship.

(2) *Personnel*—(i) *Embarking.* Personnel, including technicians, repairmen, and company officials will be permitted to embark at the locks if they are in possession of a letter addressed to the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, from the vessel's master, the operators of the vessel, or the Lake Carriers' Association, requesting that the individual named therein be permitted to embark on a particular vessel. United States vessel personnel must also be in possession of a specially validated seaman's document issued by the United States Coast Guard. Their papers will be presented to the civilian guard on duty at the main gate on Portage Avenue who will arrange escort from the gate to the vessel. Luggage will be subject to inspection.

(ii) *Debarking.* The vessel master will furnish prior notification to the Chief Lockmaster at St. Marys Falls Canal Tower (Radio Call WUD-31) that he has vessel personnel, technicians, repairmen or company officials aboard for whom he requests authority to debark. If authority to debark is granted such personnel will be furnished a letter by the vessel master, addressed to the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, giving the name and position of the individual concerned. Personnel will not debark until they have been properly identified by a licensed officer of the vessel and the letter furnished to the escort provided from the civilian guard detail who will escort personnel to the gate. In the event a person debarking for medical attention is a litter case, notification will be given sufficiently in advance to permit the Chief Lockmaster to route the vessel to the MacArthur Lock in order that the long carry over the lock gates may be avoided. The Area Engineer will make the necessary arrangements for clearance of ambulances and medical personnel into the lock area.

(3) No passengers or guest passengers will be permitted to embark or debark at St. Marys Falls Canal except in emergency when medical attention is required.

(4) Letters cited in paragraph (c)(2) of this section are valid only for a single passage through the lock area. In the event frequent access to the area is required a request for extended access with reasons therefor will be submitted to the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, who may arrange for the necessary clearance.

(5) Emergency needs to embark or debark which develop with insufficient time to follow the procedure outlined in this paragraph will be approved or disapproved by the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, according to the circumstances of the individual case, and requests therefor should be promptly directed to him.

[19 FR 1275, Mar. 6, 1954, as amended at 21 FR 10253, Dec. 20, 1956; 23 FR 2300, Apr. 9, 1958; 24 FR 4562, June 4, 1959; 32 FR 10652, July 20, 1967; 35 FR 7512, May 14, 1970; 37 FR 4194, Feb. 2, 1972; 41 FR 3291, Jan. 22, 1976]

§ 207.460 Fox River, Wis.

(a) *Use, administration and navigation of the locks and canals*—(1) *Navigation.* The Fox River and Wolf River navigation seasons will commence and close as determined by the District Engineer, Corps of Engineers, in charge of the locality, depending on conditions and the need for lockage service. Public notices will be issued announcing the opening and closing dates at least 10 days in advance of such dates.

(2) *Authority of lockmaster.* The movement of all boats, vessels, tows, rafts and floating things, both powered and nonpowered, in the canals and locks, approaches to the canals, and at or near the dams, shall be subject to the direction of the lockmaster or his duly authorized representatives in charge at the locks.

(3) *Signals.* All boats approaching the locks shall signal for lockage by four distinct whistles of short duration. Locks will not be opened on such audible signal during the period when advance notice is required if the services of the lock tender are required elsewhere to meet prior requests for lockages.

(4) *Mooring in locks.* All craft being locked shall be secured to the mooring posts on the lock walls. Large craft shall use one head line and at least one spring line. Lines shall remain fastened until the signal is given by the lock tender for the craft to leave the lock.

(5) *Delays in canals.* No boat, barge, raft or other floating craft shall tie up or in any way obstruct the canals or approaches, or delay entering or leaving the locks, except by permission from proper authority. Boats wishing to tie up for some hours or days in the canals must notify the Project Engineer directly or through a lock tender, and proper orders on the case will be given. Boats so using the canals must be securely moored in the places assigned, and if not removed promptly on due notice, will be removed, as directed by the Project Engineer at the owner's expense. Boats desiring to tie up in the canals for the purpose of unloading cargoes over the canal banks must, in each case, obtain permission in advance from the District Engineer. Request for such permission shall be submitted through the Project Engineer.

(6) *Provisions for lockage service.* (i) Commercial vessels, barges, rafts and tows engaged in commerce will be provided lockages during the same period as provided for pleasure boats (see paragraph (a)(6)(iv) of this section).

(ii) Pleasure boats, powered and nonpowered, houseboats and similar craft will be provided with not more than one lockage each way through the same lock in a 24-hour period.

(iii) All small vessels or craft, such as skiffs, sculls, sailing boats, etc., shall be passed through locks in groups of not less than six at one lockage, or may be granted separate lockage if the traffic load at the time permits.

(iv) All craft will be given lockage at De Pere and Menasha Locks between 8 a.m. and 12 midnight daily during the recreational boating season as established by the District Engineer. At all intermediate locks above De Pere and below Menasha, lockages without prior notice will be provided between the hours of 10 a.m. and 6 p.m. daily. In addition, lockages will be provided during certain other hours at the intermediate locks provided prior re-

quests are made to the Corps of Engineers, Fox River Project Office.

NORMAL AND ADDITIONAL LOCKAGE TIMES

Lock location	Normal lockage times without prior request	Additional lockage times with prior request (note 1)	Notes
Menasha	8 a.m. to 12 midnight.	None	None.
Appleton	10 a.m. to 6 p.m.	8 a.m. to 10 a.m.	2.
		6 p.m. to 12 midnight.	3–4.
Cedars	do	do	3–4.
Little Chute	do	do	3–4.
Combined	do	do	3–4.
Kaukauna	do	do	3–4.
Rapide	do	do	3–4.
Croche	do	8 a.m. to 10 a.m.	2.
Little Kaukauna	do	6 p.m. to 12 midnight.	3, 4, 5.
		8 a.m. to 10 a.m.	2.
De Pere	8 a.m. to 12 midnight.	None	None.

NOTE 1. a. Requests may be made either in writing, by telephone or in person to the U.S. Army, Corps of Engineers, Fox River Project Office, 1008 Augustine Street, Kaukauna, Wis. 54130, telephone: 414-766-3531.

b. Regular business hours of the Fox River Project Office are from 7:30 a.m. to 4 p.m., Monday through Friday.

c. During the period from the Saturday before Memorial Day to the Sunday after Labor Day, the Menasha and De Pere Locks will be operational between 11 a.m. and 1 p.m. on Saturdays, Sundays and holidays to receive requests for additional lockages at the intermediate locks.

d. Requests will include name, address, business and home telephone numbers as well as name and registration number of the boat and the approximate time of lockage requirements at each of the locks involved.

e. Only one request need be given for groups of boats.

f. If, for any reason, a requested lockage will not be made or must be delayed unreasonably, prompt advice must be given to the Fox River Project Office, or, if after office hours (see "b" and "c" above), to the Lockmaster at either Menasha or De Pere Locks.

NOTE 2. For lockages between 8 a.m. and 10 a.m. at all the intermediate locks.

a. Requests for lockages during these hours must be received in the Fox River Project Office no later than 1 p.m. on the day before lockage is required.

b. Requests for lockages on Sundays and Mondays must be received no later than 1 p.m. on preceding Fridays except as noted in c below.

c. During period covered by Note 1c, above, requests will be received no later than 1 p.m. on the day before lockage is required.

NOTE 3. For lockages between 6 p.m. and 12 midnight—at all intermediate locks:

a. Requests for lockages during this period must be received in the Fox River Project Office no later than 1 p.m. on the day lockage is required.

b. Requests for lockages on Saturdays and Sundays must be received no later than 1 p.m. on preceding Fridays except as noted in c below.

c. During the period covered by Note 1c above, requests will be received no later than 1 p.m. on the day lockage is required.

NOTE 4. In order for a boat to complete a trip between the Intermediate Locks after 6 p.m. locking service will be made available without prior request provided the boat is in the intermediate lock system before 6 p.m.

NOTE 5. In order for a boat to complete a trip, northbound lockage service at the Little Kaukauna Locks will be made available between 6 p.m. to 12 midnight, without the prior request described in Note 3 above, provided notice of requirement is given to the lockmaster at this lock prior to 6 p.m.

NOTE 6. For lockages between 6 p.m and 11 p.m. at Little Kaukauna Lock:

Lockages will be granted north and southbound at Little Kaukauna Lock without prior request from 6 p.m. to 11 p.m. on Friday, Saturday, Sunday, and holidays from the weekend before Memorial Day through the weekend after Labor Day.

(7) *Injury to locks or fixtures.* Vessel operators shall use great care not to strike any part of the locks or sluice walls, or any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the banks of the canals. All boats using the canals shall be free from projecting irons or rough surfaces that would be liable to damage the locks or any part of the canals, and they must be provided with fenders to be used in guarding the lock walls, etc., from injury. Boats will not be permitted to enter or leave the locks until the lock gates are fully in the gate recesses, and the lock tender has directed the boat to proceed. No vessel shall be raced or crowded alongside another vessel, or be moved at such speed as will cause excessive swells or wash. Speed shall be kept at a minimum consistent with safe navigation.

(8) *Handling gates.* No one, unless authorized by the lock tender, shall

open or close any gate, or valve, or in any way interfere with the employees in the discharge of their duties. The lock tender may call for assistance from the master of any boat using the lock should such aid be needed.

(9) *Draft of boats.* No boat shall enter a canal or lock whose actual draft exceeds the least depth of water in the channel of the canal as given by the Project Engineer.

(10) *Right-of-way.* Boats going downstream shall have the right-of-way over boats going upstream. Ordinarily, the boats or tows arriving first at any of the locks shall have precedence in passage except that those vessels which have given advance notice, when such notice is required, shall have precedence over other vessels when such notifying vessel is ready for passage. In all cases boats and barges belonging to the United States, or employed upon public works, shall have precedence over all others, and commercial passenger boats shall have precedence over tows. All boats not taking advantage of the first lawful opportunity to pass shall lose their turn. When lockage has started on tows requiring multiple lockages, all units of the tow will be locked ahead of other vessels traveling in the same direction. In the case of tows requiring two lockages, any craft awaiting lockage in the opposite direction will have priority over the second lockage of the tow.

(11) *Boats and rafts without power.* No boat or raft without power except small boats controlled by sails or oars shall be brought through the canal unless accompanied by a power operated boat.

(12) *Dumping of refuse in waterway.* No refuse or other material shall be thrown or dumped from vessels into the natural river, improved channels, canals and locks or placed on any bank of the river or berm of the canals so that it is liable to be thrown or washed into the waterway. (Sec. 13 of the River and Harbor Act of Mar. 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), prohibits the depositing of any refuse matter in any navigable water or along the banks thereof where the same shall be liable to be washed into such navigable water.)

(13) *Drawing off water.* No water shall be drawn by any party or parties from any portion of the Fox River canals, or of the Fox River, including its lakes, improved channels and unimproved channels, to such extent as to lower the water surface below the crest of that dam next below the place where such draft of water is affected.

(14) *Obstructing navigation.* Anyone who shall willfully or through carelessness in any way obstruct the free navigation of the waterway, or by violation of any of the laws or regulations governing the waterway and those using it, delay or inconvenience any boat having the right to use the waterway, shall be responsible for all damages and delays, and for all expenses for removing the obstructions. (Sec. 20 of the River and Harbor Act of Mar. 3, 1899 (30 Stat. 1154; 33 U.S.C. 415), authorizes the immediate removal or destruction of any sunken vessel, craft or similar obstruction, which impedes or endangers navigation.)

(15) *Commercial statistics.* (i) As required by section 11 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), owners, agents, masters or clerks of vessels plying the waterway shall submit a report on such activities for statistical purposes which shall contain the following information:

Name of vessel.
Name and address of owner or operator.
Type of vessel—steam, motor, sail, barge or other type.
Number of passengers.
Net registered tonnage—if not registered, approximate net tonnage.
Maximum draft at time of passage.
Cargo—by commodities, expressed in tons, or other units by which such commodities are customarily measured, giving origin and destination.

(ii) The report shall be mailed promptly to the District Engineer, Chicago District, Corps of Engineers, Attn: Construction—Operations Division—Statistics, 219 South Dearborn Street, Chicago, Ill. 60604, on forms furnished free of charge by that office. On written request, persons or corporations making frequent use of the waterway may be granted permission to submit monthly statements in lieu of reports by trips.

(16) *Trespass on U.S. property.* Trespass on waterway property or injury to the banks, locks, dams, canals, piers, fences, trees, buildings or any other property of the United States pertaining to the waterway is strictly prohibited. No business, trading or landing of freight or baggage will be allowed on or over Government property, unless a permit or lease approved by the Secretary of the Army has been secured.

(17) *Neenah dam outlet works.* (i) During periods of high water, when determined to be necessary by the District Engineer, U.S. Army Engineer District, Chicago, to reduce the threat of flooding, it shall be the duty of the person owning, operating, or controlling the dam across the Neenah Channel of the Fox River at Neenah, Wis., acting as agent of the United States, to open or close, or cause to be opened or closed, pursuant to paragraph (a)(17)(ii) of this section, the outlet works of said dam to regulate the passage of water through said outlet works.

(ii) The outlet works of said dam shall be opened when and to the extent directed by the District Engineer or his authorized field representatives, and said outlet works shall thereafter be closed when and to the extent directed by the said District Engineer or his authorized field representative.

(b) *Use of the United States drydock on Fox River at Kaukauna, Wis.* (1) The drydock being a part of the Fox River improvement, its use will be governed by the general regulations for the use, administration, and navigation of that river, so far as they may be applicable.

(2) The drydock at Kaukauna, when not required for repairs or construction by the United States, may be used by private parties or corporations under certain restrictions and under the supervision and direction of the United States District Engineer in charge of the locality or his authorized agent.

(3) The drydock will be loaned to private parties only when no private drydock is available at the time and for the purpose desired. Applicants will be required to establish over their signature the fact that due effort has been made to secure the use of a private drydock and none can be had.

(4) Private parties desiring to use the Kaukauna drydock will give notice to the United States Assistant Engineer in local charge at Appleton, Wis., as long in advance as practicable, stating when use of the dock is wanted, nature of repairs required, and the dimensions and character of boat. No boat will enter the dock until the permission of the United States District Engineer or the Assistant Engineer above referred to has been obtained.

(5) All private parties or corporations using the Kaukauna drydock will furnish all material and labor, including blocking, when necessary, required for prompt execution of their work, and will also furnish all labor for properly operating, under the immediate personal supervision of an authorized canal employee, gates, and sluices of the drydock. No gate or sluice of the drydock will be operated, or in any way meddled with, except by permission of and under the personal supervision of such authorized canal employee.

(6) No boat will be allowed to occupy the Kaukauna drydock for a longer period than 2 days when other boats are waiting to use the dock, except in cases when, in the opinion of the United States District Engineer or his authorized agent, circumstances necessitate and justify a longer use than 2 days. The United States District Engineer or his authorized agent is authorized to remove from the drydock any boat using or occupying such dock without his authority, and the expense of such removal will be paid by the party or parties owning such boat.

(7) The wages of all mechanics and laborers, due from private parties for repairs carried on in the Kaukauna drydock, must be paid before the boat leaves the dock.

(8) Repair shop, timber shed, tools, etc., owned by the Government at and near the drydock shall not be used by parties allowed to occupy the drydock.

(9) Lumber and all material needed by parties allowed to use the drydock may be deposited in the drydock yards at such places as may be directed, but only for such time as repairs are being made, and residue must be entirely re-

moved when the boat leaves the dock; general storage will not be permitted.

(10) All refuse and old material taken from boats under repairs must be removed or disposed of, as may be directed, by the owner of the boat or his employees without expense to the Government, and before the boat leaves the dock, and to the satisfaction of the agent in charge of the dock.

(11) The Government charges for the authorized and necessary use and occupancy of the Kaukauna drydock by private boats shall be, until further orders, as follows:

(i) Docking charges (including lay time for the calendar day on which vessel is docked): Tugs, motor boats, and dredges, 75 cents per linear foot; $25 minimum charge. Barges, dump scows, and derrick boats, 65 cents per linear foot; $20 minimum charge.

(ii) Lay-day charges (excluding Sundays and national holidays, unless repairs are made on such Sundays and holidays): For all vessels, 20 cents per linear foot per calendar day or part thereof; $7 per calendar day or part thereof, minimum charge.

(12) The charges for all use or occupancy of the Kaukauna drydock by a boat or private parties, after repairs on such boat have, in the opinion of the United States District Engineer or authorized agent, been so far completed as to permit safe removal from the dock, or after such removal has been ordered by the United States District Engineer or his authorized agent, shall be $50 per day or part of a day, in addition to any penalties incurred for violation of any of the regulations prescribed by law for the government of the dock and those using it.

(13) The dock will be considered in use by a boat from the time the dock is placed at its disposal until the boat is out of the dock.

(14) The length of all vessels shall be the over-all length measured on the main deck from stem to stern.

(15) The charges for the use of the drydock shall be paid within 10 days from date of bill, which will be submitted to the owner by the District Engineer as promptly as possible after the vessel leaves the dock. If charges are not so paid, the vessel shall be liable to the amount of the charges and the cost of collection in the manner prescribed by law, and the owner of the vessel shall be denied the use of the drydock until all charges and the cost of collection have been paid to the United States.

(16) This section supersedes the regulations for the use of this drydock approved April 10, 1906, which regulations are hereby revoked.

[Regs., Oct. 2, 1926, as amended at 33 FR 11544, Aug. 14, 1968; 36 FR 1253, Jan. 27, 1971; 37 FR 24423, Nov. 17, 1972; 43 FR 26570, June 21, 1978]

§ 207.470 Sturgeon Bay and Lake Michigan Ship Canal, Wis., use and navigation.

(a) *Authority of canal officers.* The movement of all boats and floating things in the canal and in the approaches thereto shall be under the direction of the superintendent or his authorized assistants, and their orders and instructions must be obeyed.

(b) *Signals.* On entering the canal at either entrance, steamers or tugs must blow their whistles for 1 minute in order to warn craft approaching from opposite direction and give them time to guard against collisions, by tying up if necessary. All steamers approaching others going in the opposite direction shall slacken speed so as to pass in safety. Compliance is required with rule V of the rules and regulations for the government of pilots, adopted by the United States Coast Guard.

Rule V. Whenever a steamer is nearing a short bend or curve in the channel where, from the height of the banks or other cause, a steamer approaching from the opposite direction cannot be seen for a distance of half a mile, the pilot of such steamer, when he shall have arrived within half a mile of such curve or bend, shall give a signal by one long blast of the steam whistle, which signal shall be answered by a similar blast by the pilot of any approaching steamer that may be within hearing. Should such signal be so answered by a steamer upon the farther side of such bend, then the usual signals for the meeting and passing shall immediately be given and answered; but if the first alarm signal of such pilot be not answered, he is to consider the channel clear and govern himself accordingly.

(c) *Speed.* The rate of speed while passing through the canal shall not exceed 5 miles per hour.

(d) *Keeping in the center.* The center must be kept all the way through, except in passing other craft. In case of grounding, the rapid or strong working of boat's engines is strictly forbidden.

(e)-(g) [Reserved]

(h) *Rafts.* (1) The passage of bag or sack rafts, or of loose logs, into or through the canal is prohibited.

(2) Rafts shall be made up with logs parallel to each other, in the direction of raft lengths, secured and held closely together by frequent cross-sticks, chains, or cables.

(3) Rafts shall not be of greater dimensions, either way, than 50 feet wide by 600 feet long, and if longer than 300 feet shall be handled by two tugs.

(4) No raft shall pass through the canal, unless by special permission of the superintendent or his authorized assistants, who will direct a time for passing that will least interfere with other navigation.

(5) Masters of tugs and other persons in charge of rafts are required to avoid damaging the canal revetments, and displacing buoys, spars, or the pedestal of any range light aiding navigation through the canal. They shall keep careful watch when passing aids to navigation, and should any be accidentally displaced, shall report the fact at the earliest possible moment to the superintendent or his authorized assistants.

(i)-(l) [Reserved]

(m) *Refuse in canal.* No person shall roll or throw any stones, ashes, cinders, or other material into the canal or the approaches thereto, or place any such material on any bank or berm of the canal so that it is liable to be thrown or roll in.

(n) [Reserved]

(o) *Commercial statistics.* The masters or clerks of all vessels using the canal (except in the case of vessels merely entering to seek a harbor of refuge from storms and not bound through) shall furnish in writing to the superintendent a detailed statement of passengers and cargo carried.

[Regs., Feb. 15, 1895, as amended Apr. 14, 1908; 42 FR 57962, Nov. 7, 1977]

§ 207.475 Lake Michigan; naval restricted area, United States Naval Training Center, Great Lakes, Ill.

(a) *The area.* An area extending in a north and south direction from the Great Lakes, Illinois, south breakwater to an east-west line projecting eastward from the shore termination of the north fence of the United States Naval Training Center, Great Lakes, Illinois, and extending into Lake Michigan for a distance of one mile from the shoreline.

(b) *The regulations.* No vessel of any kind, except those engaged in naval operations, shall enter, navigate, anchor, or moor in the restricted area without first obtaining permission to do so from the Commander, United States Naval Training Center, Great Lakes, Illinois, or his authorized representative.

[28 FR 319, Jan. 11, 1963]

§ 207.476 The Inland Route—lock in Crooked River, Alanson, Mich., use, administration, and navigation.

(a) *General.* The use, administration, and navigation of the lock shall be under the direction and supervision of the District Engineer, U.S. Army Engineer District, Detroit, Mich., and his authorized agents.

(b) *Authority of lockmaster.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to the employees of the Government and to any and every person within the limits of the lock area, whether navigating the lock or not. No one shall cause any movement of any boat, craft or other floating object in the lock or approaches except by or under the direction of the lockmaster or his assistants.

(c) *Schedule of seasonal operation.* (1) April 15 through May 31—6 a.m., e.s.t., to 10 p.m., e.s.t., daily.

(2) June 1 through August 31—6 a.m., e.s.t., to 11 p.m., e.s.t., daily.

(3) September 1 through November 15—6 a.m., e.s.t., to 10 p.m., e.s.t., daily.

(d) *Maximum allowable dimensions of craft.* (1) Overall length—60 feet.

(2) Overall width—16 feet.

(3) Height above water—15 feet when upper pool is at low water datum.

(4) Draft—6 feet when lower pool is at low water datum.

(e) *Signals.* (1) Craft desiring lockage in either direction shall give notice to the lock tenders, when not farther than 200 yards from the lock, by one long blast (of 10 seconds duration) followed by one short blast (of 3 seconds duration) of whistle, horn, or siren.

(2) Craft not equipped with whistle, horn, or siren may signal for lockage by use of the signal provided for this purpose located near the extreme end of the guide wall to the starboard side of the craft, both upbound and downbound.

(f) *The procedures for transit of lock.* (1) Stand clear of the lock while the red signal light shows.

(2) When the green signal light shows and the lock horn sounds three blasts, approach and enter the lock.

(3) Full control of the craft must be maintained while entering the lock.

(4) After entrance to the lock is complete, the craft shall be securely moored to the cleats and bitts situated on the lock wall.

(5) While moored in the lock, the operator of the craft shall maintain constant attention to the mooring lines, to provide slack or retain tautness as needed.

(6) The craft shall remain securely moored until the exit lock gate is fully open and the lock horn sounds one blast.

(7) When the exit lock gate is fully open and the lock horn has sounded one blast, the craft shall immediately leave the lock under full control of its operator.

(g) *Deviation from schedule and procedure.* The District Engineer may authorize the temporary opening of both upper and lower lock gates to permit unobstructed passage for special purposes. A public notice will be issued advising interested parties of such deviation prior to the effective date thereof.

(h) *Precedence at lock.* The craft arriving first at the lock shall be first to lock through; but precedence will be given to craft belonging to the United States or to other local government entities, such as State, county, or municipality. Arrival posts may be established above and below the lock. Craft arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

[32 FR 9068, June 27, 1967, as amended at 34 FR 9259, June 12, 1969; 41 FR 24123, June 15, 1976]

§ 207.480 Lake Huron, Mich.; Harbor of refuge, Harbor Beach, use and navigation.

(a) All boats, barges, and vessels entering the harbor will be required to take such positions as may be assigned them by the officer in charge, who will direct their movements, either from the breakwater or from the Government tug on the harbor.

(b) In the absence of any directions as to position, boats, barges, and vessels entering the harbor will observe the following rule: The first steam vessel, or the first steam vessel with consort in tow, on entering the harbor for shelter, will proceed to the upper end of the breakwater. All steam vessels, and all steam vessels with consorts in tow, entering later, will place themselves in a compact position close to those preceding them. Sailing craft will so locate themselves that they will not lie in the way of other vessels entering the harbor. All vessels of every description will in no way place themselves so as to interfere with the work of reconstruction of piers, or repairs, that may be in progress at the time.

(c) The use of chains in making fast to the breakwater will not be permitted. Lines must be attached to the snubbing posts only, and outboard anchors taken in.

(d) Steam craft with barges or vessels in tow will, if practicable, at once place them compactly alongside the

breakwater, either taking in the towlines entirely or passing them on the breakwater so as not to interfere in any way with the landing or departure of boats or vessels between them. If impracticable to place them alongside the breakwater, they will each drop anchor and at once take in all towlines extending from one to the other.

(e) Passenger boats will, in general, have the preference as to location and attention by the officer in charge. Rafts will give way to all documented craft.

(f) All classes of boats, barges, vessels, or other floating property making fast to the breakwater must at once place such fenders between themselves and the breakwater as may be thought necessary by the officer in charge to prevent chafing or other damage.

(g) The unloading of wood, coal, ballast, stone, or freight of any class upon the breakwater is expressly prohibited, except in certain cases allowed by special permission from the officer in charge.

(h) Each and every piece of floating property made fast to the breakwater, or anchored in the harbor, must keep outboard from sunset to sunrise a conspicuous white light, and must have upon it and in immediate charge of it a watchman during the entire time such floating property is in the harbor. All colored lights must be at once taken in, or covered, on dropping anchor or making fast to the breakwater.

[Regs., Apr. 3, 1906]

§ 207.490 Cheboygan River, Mich.

(a) *Logging.* The following regulations are prescribed for the Cheboygan River, a navigable waterway of the United States, whereon the floating of loose timber and logs and sack rafts (so-called) of timber and logs is the principal method of navigation:

(1) Steamboats and sailing craft shall have the right to navigate the Cheboygan River at all times.

(2) Loose timber and logs shall be formed into rafts on the right or east half of the river and within the first thousand feet north of the bridge. Such rafts must be at all times guyed with lines at intervals not exceeding 125 feet and of such length as to keep the sides of the boom practically parallel and within 80 feet of each other.

(3) All loose logs floated from the upper stream for the purpose of forming rafts shall pass through the east channel of the swing bridge, the west channel being kept clear at all times.

(4) Rafts shall be so guyed to the easterly shore of the river that the westerly edge of the raft shall not pass the axis of the river.

(5) The trip boom above the bridge for the purpose of guiding logs through the eastern channel shall be kept open at all times, except when free logs are running for the formation of a raft or for some similar purpose. When the trip boom is closed the Cheboygan Boom Co. shall keep a man at said boom so as to open same readily and promptly for all vessels or boats desiring to pass.

(6) Vessels shall not at any time lie in the stream for purposes of loading, or for any other purpose, but must, when not in transit to or from the harbor, lie against some wharf or the bank.

(b) *Floating of logs in Inland Route and connecting waters between Cheboygan and Conway, Mich.* (1) All logs in streams shall be kept in motion except when being boomed for storage.

(2) In booming logs for storage the owners of the logs shall keep a well-defined channel open for navigation.

(3) All booms shall be tied securely at both ends to prevent the swinging of the booms with a change of the wind.

[Regs., July 11, 1903, Oct. 22, 1908, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.560 Sandusky Harbor, Ohio; use, administration, and navigation.

(a)—(c) [Reserved]

(d) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(e) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any

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vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 6, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.565 Vermilion Harbor, Ohio; use, administration, and navigation.

(a)—(b) [Reserved]

(c) No vessel or other craft shall moor or anchor to any structure of the United States without the consent of the District Engineer, Corps of Engineers.

(d) No vessel or other craft shall moor or anchor in or along any improved channel or basin in such a manner as to interfere with the improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel or craft is so moored or anchored, the owner thereof shall cause such vessel or craft to be moved upon notification from, and within the time specified by, the District Engineer.

[13 FR 9564, Dec. 31, 1948, as amended at 42 FR 51773, Sept. 29, 1977; 42 FR 57962, Nov. 7, 1977]

§ 207.570 Harbors of Huron, Lorain, Cleveland, Fairport, Ashtabula, Conneaut, Ohio; use, administration, and navigation.

(a)—(b) [Reserved]

(c) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(d) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 5, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.580 Buffalo Harbor, N.Y.; use, administration, and navigation.

(a)—(b) [Reserved]

(c) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(d) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 5, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.590 Black Rock Canal and Lock at Buffalo, N.Y.; use, administration and navigation.

(a) The term "canal" when used in this section will mean all of the Black Rock Waterway, including Black Rock Lock, and all of the lands, piers, buildings, and other appurtenances acquired by letters patent from the State of New York, or constructed for the use of the waterway; the southerly limit thereof being at the southerly end of Bird Island Pier, and the northerly limit being at the downstream end of the guide pier, Black Rock Lock, a length of 3.7 miles.

(b) The canal and all of its appurtenances and the use, administration and navigation thereof shall be in charge of the District Engineer, U.S. Army Engineer District, in charge of the locality, or his authorized agents.

(c) The movement of all vessels, boats, or other floating things in the canal shall be under the direction of the authorized agents of the District Engineer in charge, and their orders and instructions must be obeyed.

(d) For passage through the canal, vessels or boats belonging to the U.S. Government shall have precedence over all others.

(e) All registered vessels or boats must pass through the canal in order of their arrival at the canal limits,

unless otherwise directed in accordance with this section.

(f) [Reserved]

(g) No vessel shall pass or approach within ¼-mile of a vessel bound in the same direction in the Black Rock Canal south of the Ferry Street Bridge. Tugs without tows, tugs towing a single barge under 150 feet in length, and single vessels under 150 feet in length are exempt from this paragraph.

(h) No vessel or boat shall anchor in or moor along the canal except at localities specially designated by the District Engineer or his agent; and no business, trading, or landing of freight or baggage, except such articles as may be readily carried in the hand, will be allowed on or over the canal lands or structures, without the permission of the District Engineer or his agent.

(i) No person or operator of a vessel in the Black Rock Canal, lock or approaching channels shall throw or discharge or permit to be thrown or discharged any solid material of any kind or any petroleum product of any kind into the canal, lock or appurtenant waters.

(j) All vessels and tows shall be navigated with care so as not to strike or disturb the channel buoys or channel markers. If a buoy or other channel marker is accidentally struck, damaged or displaced, the fact shall be reported immediately to the Black Rock Lock, foot of Bridge Street, Buffalo, N.Y., telephone 876-5454.

(k) Ferry Street Bridge: The clear-headroom under the bridge at low water datum is 17.3 feet for a width of 86 feet from the pivot pier, thence decreasing to 12.3 feet at the left (westerly) abutment.

(1) All vessels and boats which cannot pass under the bridge shall, on approaching the bridge, reduce speed sufficiently to enable them to come to a dead stop, without touching the bridge, in case the movable span cannot be lifted. If the wind is dangerously strong, passage of the bridge shall not be attempted by large vessels without the aid of a tug or tugs.

(2) Vessels and boats bound north shall have the right-of-way and priority for passage through the bridge over those bound south.

(3) All vessels and boats desiring passage through the bridge shall signal therefor by one long and two short whistle blasts.

(4) Upon receiving the opening signal, the bridge operator shall answer by giving the same signal on the bridge whistle and he shall then proceed at once to lift the bridge.

(5) In case the bridge cannot be lifted, for any cause, the bridge operator shall answer a vessel signal by giving five short whistle blasts; and the vessel shall then be stopped until the bridge is ready to be lifted, when the bridge operator shall give the whistle signal for passage and the vessel may proceed.

(6) In case the bridge is disabled so that it cannot be lifted for one-half hour or more pending repairs, red flags will be displayed on the bridge in daytime and two red lantern lights, one above the other, at night; and when such signals are displayed no vessel or boat shall signal for or attempt passage through the bridge.

(l) Radio control of vessel movement in Black Rock Canal. (1) The movement of vessels in the Black Rock Canal will be controlled by radio communication between the Black Rock Lock and the vessels desiring to use the canal. Vessels will not be permitted to meet or pass in the channel of restricted width between the southerly end of Bird Island (approximately 3,500 feet northerly along the canal from the North Breakwater South End Light) and the International Railway Bridge near the southerly entrance to the Black Rock Lock. Vessels less than 150 feet in length and tugs towing a single barge under 150 feet in length are not to be included in this special condition. In addition to the control of vessel movements in the restricted section of the canal, radio communications will also be utilized to facilitiate the passage of vessels through the entire canal and the Black Rock Lock.

(2) Radio communication will be the only means of control of vessel traffic in the canal in order to prevent a meeting or passing of vessels in the restricted area, and therefore it is man-

datory that all vessels over 150 feet in length and tugs towing a barge or barges over 150 feet in combined length of tow be equipped with radio communication equipment operating on designated frequencies. Any vessel lacking such equipment will not be permitted to enter the canal unless arrangements are made with the Black Rock Lock by land telephone to 876-5454 or marine ship-to-shore facilities immediately before entering the canal.

(3) The Black Rock Lock radio communication equipment operates on VHF(FM) frequencies as follows: VHF—156.8 Mcs—Channel 16—Safety and Calling, VHF—156.7 Mcs—Channel 14—Working; VHF—156.6 Mcs—Channel 12 Working. A listening watch is maintained on VHF Channel 16.

(4) In order that positive control may be maintained it is mandatory that the following procedures be followed in communicating by radio with the Black Rock Lock:

(i) Vessels desiring to enter the Black Rock Canal from either the Buffalo Outer Harbor or the Buffalo River shall call the Black Rock Lock on VHF Channel 16 or by land telephone approximately 15 minutes before the estimated time of arrival at Buffalo Harbor Traffic Lighted Bell Buoy 1 located at latitude N. 42°50.1' and longitude W. 78°55.4'. Information to be furnished the Black Rock Lock Operator should include the name of the vessel, position, destination, length, draft (forward and aft) and the type of cargo. A second call shall be made to the lock when the vessel is abreast of the Buffalo Harbor Light on the southerly end of the detached West Breakwater. Information furnished the vessel by the Lock Operator will assure the vessel operator of the proper time to enter the Black Rock Canal with a view to safety and minimum delay.

(ii) Vessels desiring to enter the Black Rock Canal from either the Buffalo Outer Harbor or the Buffalo River shall call the Black Rock Lock on VHF Channel 16 or by land telephone to 876-5454 immediately before departing a dock and again when abreast of the North Breakwater South End Light on the southerly end of the North Breakwater.

(iii) In any radio communication from a vessel to the Black Rock Lock, and VHF(FM) frequencies will be utilized.

(iv) In any radio communication from a vessel to the Black Rock Lock, the VHF (FM) frequencies will be utilized if available in preference to the MF (AM) frequencies.

(v) When an initial radio contact has been made with the Black Rock Lock the vessel entering the canal shall maintain a standby watch at the radio until the passage through the canal and lock is completed.

(vi) Failure to comply with the foregoing procedures could result in considerable delay to a vessel and possibly in a collision between vessels in the restricted section of the canal.

(m) Black Rock Lock. All vessels and boats desiring to use the lock shall signal by two long and two short whistle blasts.

(1) Northbound vessels and boats shall not be brought to within less than 300 feet of the upper lock gates, nor shall southbound vessels be brought to within less than 200 feet of the lower lock gates, until the lock is made ready and the lockmaster in charge signals the vessel to enter the lock.

(2) Vessels and boats shall not moor to the approach walls of the lock at either end, for any other purpose than waiting for lockage, except by direction or permission of the lockmaster.

(3) Commercial vessels will receive perference in passage through the locks. Small vessels such as row, sail, and motor boats, bent on pleasure only, will be passed through the lock in company with commercial vessels when small vessels can be safely accomodated or in the absence of commercial vessels may be passed through the lock individually or together in one lockage on the hour if northbound and on the half hour if southbound. However, commercial vessels will receive preference which could delay the passage of pleasure craft. Pleasure craft will not be permitted to pass through the lock with vessels carrying inflammable cargo. Vessels and other large boats when in the lock shall

fasten one head line and one spring line to the snubbing posts on the lock walls, and the lines shall not be cast off until the signal is given by the lockmaster for the boats to leave the lock.

(4) Vessels and boats will be passed through the lock in order of their arrival except that the lockmaster may order a small vessel to lock through in company with another vessel, irrespective of the former's order of arrival.

(5) All vessels and boats shall be maneuvered with great care so as not to strike any part of the lock walls, or any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the lock approaches.

(6) Vessels and boats shall not enter or leave until the lock gates are fully in their recesses, and the lockmaster has given direction for starting.

(7) Upon each passage through the lock, masters or clerks of all vessels and boats (except small motor boats and pleasure craft) shall report to the lock office a statement of passengers, freight, and such other statistical information as may be required by the blank forms which are issued to them for the purpose.

(8) Trespass on lock property is strictly prohibited. However, in that portion of the Black Rock Canal lying between the International Railway Bridge and the northerly end of the westerly lower guide pier, the following conditions shall apply to the embarking or disembarking of crew members or passengers of a vessel transiting the lock:

(i) Only the master or mate and two or three linesmen will be permitted to go ashore from transiting vessels and then only for normal operations and business incident to the transit. A maximum of only four (4) men will be permitted to go ashore from any one ship.

(ii) No crew members will be permitted to board a ship at the locks unless previously requested in writing by the master or owners, and approved by canal authorities.

(iii) No crew member may leave a ship while it is in transit in the lock or canal unless certified in advance as an emergency by the vessel master and approved by canal authorities.

(iv) No guest passengers will be permitted to either board or disembark at the canal or locks.

(9) Schedule of Seasonal Operation:

(i) March 23 through June 14—6 a.m. to 11 p.m., daily.

(ii) June 15 through September 6-24 hours, daily.

(iii) September 7 through November 30—6 a.m. to 11 p.m., daily.

(iv) December 1 through March 22—8 a.m. to 4:30 p.m., daily. During the navigation season the hours may be extended by the district engineer, depending on conditions and the need for lockage service. Public notices will be issued announcing the opening and closing dates at least 10 days in advance of such dates.

(10) Non-Operational Hours Lockings. In addition to the above schedule of operating hours, commercial vessels may be locked through during non-operational hours with prior arrangements made through the U.S. Army Engineer District, Buffalo. Requests for non-operational hours lockings shall be made at lease 24 hours in advance by calling (716) 876-5454, extension 2284 or by radio as described in paragraph (l) of this section, Monday through Friday, 9 a.m. to 4 p.m., except holidays. Requests shall include the approximate time of arrival and the name and call letters of the vessel or, if the vessel is not equipped to receive radio messages, a telephone number at which messages may be received for the vessel. If a requested lockage must be delayed, prompt notification shall be given by telephone or radio.

[30 FR 3382, Mar. 13, 1965; 30 FR 3881, Mar. 25, 1965, as amended at 41 FR 34035, Aug. 12, 1976; 42 FR 57962, Nov. 7, 1977; 45 FR 51555, Aug. 4, 1980]

§ 207.600 Rochester (Charlotte) Harbor, N.Y.; use, administration, and navigation.

(a)—(b) [Reserved]

(c) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(d) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 5, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.610 St. Lawrence River, Cape Vincent Harbor, N.Y.; use, administration, and navigation of the harbor and United States breakwater.

(a)—(c) [Reserved]

(d) Vessels shall observe the following rule in mooring to the breakwater: The first self-propelled vessel stopping at the harbor for shelter will proceed to the upstream end of the breakwater and moor along either side of it. All similar vessels entering later will place themselves in a compact position close to those preceding them. Passenger vessels will, in general, have preference as to location of moorage. Sailing craft will so locate themselves that they will not lie in the way of other vessels entering the harbor. All vessels of every description will place themselves so as not to interfere with any work of reconstruction or repair that may be in progress at the time.

(e) The use of chains in making fast to the breakwater is prohibited. Lines must be attached to the snubbing posts only, and outboard anchors taken in.

(f) Vessels with other craft in tow will, if practicable, at once, moor them compactly along the breakwater, either taking in the towlines or placing the slack in them upon the breakwater in such a manner as not to interfere with other vessels. If necessary to moor alongside of other vessels moored to the breakwater, the towlines shall be taken in or disposed of in such a manner as not to interfere with the departure of vessels moored between them and the breakwater.

(g) Vessels of every description mooring to the breakwater, must place suitable fenders between themselves and the breakwater to protect the timber walings on the breakwater from damage.

(h) The unloading of freight of any class upon the breakwater is expressly prohibited, except in accordance with special permission from the said District Engineer or his representative.

(i) Each and every vessel made fast to the breakwater, or anchored in the harbor without a line made fast to the shore or shore dock, must have at least one experienced person upon it during the entire time said vessel is thus moored in the harbor.

[Regs., May 6, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.611 St. Lawrence River from Tibbets Point to Raquette River, excluding the section between Eisenhower Lock and Snell Lock, N.Y.; use, administration and navigation in U.S. waters. [Reserved]

§ 207.612 San Diego Harbor, Calif.; restricted areas.

(a) [Reserved]

(b) *Restricted area at U.S. Naval Degaussing Station*—(1) *The area.* That portion of San Diego Bay near Point Loma, inclosed by lines connecting the following points, which are rectangular coordinates and are referred to U.S. Coast and Geodetic Survey station "Old Town" as their origin:

"a" S. 18,738.80, W. 16,299.50.
"b" S. 18,817.60, W. 15,791.30.
"c" S. 19,376.09, W. 14,270.73.
"d" S. 20,023.15, W. 14,462.94.
"e" S. 21,080.24, W. 14,333.14.
"f" S. 22,074.40, W. 16,371.48.

(2) *The regulations.* (i) There shall be no introduction of external magnetic field sources within the area.

(ii) Craft of any size shall not be excluded from transiting the area. However, they shall proceed through the area by the most direct route without delay or loitering. On occasion, access to the bait barges may be delayed for intermittent periods not exceeding 30 minutes.

(iii) No craft of any size shall lay-to or anchor within the area except on prior permission granted by the Offi-

cer in Charge, U.S. Naval Degaussing Station.

(c) *Restricted area between Ballast Point and Zuniga Point*—(1) *The area.* An area in San Diego Bay between Ballast Point and Zuniga Point inclosed by lines connecting the following stations:

Station	Latitude	Longitude
A	32°41'17"	117°13'58"
B	32°41'19"	117°13'36.5"
C	32°41'01"	117°13'34"
D	32°40'59"	117°13'55"
E	32°41'03"	117°13'56"
A	32°41'17"	117°13'58"

(2) *The regulations.* (i) No vessel shall anchor within the restricted area at any time.

(ii) Dredging, dragging, seining, other fishing operations, and other activities not under the direction of the United States, which might foul underwater installations within the restricted area, are prohibited.

(iii) All tows entering the restricted area shall be streamed and shortened to the seaward of the area and towing appendages and catenaries shall not be dragged along the bottom while proceeding through the area.

(iv) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(d) *Enforcement.* The regulations in this section shall be enforced by the Commandant, Eleventh Naval District, San Diego, California, and such agencies as he may designate.

[17 FR 5951, July 2, 1952, as amended at 29 FR 9710, July 18, 1964; 35 FR 16370, Oct. 20, 1970]

§ 207.612a San Diego Harbor, Calif.; naval restricted area adjacent to Point Loma.

(a) *The area.* That portion of San Diego Bay southerly of Ballast Point, exclusive of the southwesterly portion of the restricted area described in § 207.612(b) located westerly of the entrance channel, bounded on the west by the shoreline at Point Loma, on the east by the entrance channel west project line, and on the south by latitude 32°40'.

(b) *The regulations.* (1) The area is reserved for anchorage of vessels of the U.S. Government and authorized harbor pilot and patrol boats. All other craft may navigate and operate through the area, and temporary mooring of vessels (not to exceed 24 hours) is permissible.

(2) No other vessels shall anchor or moor permanently in the area except by special permission obtained in advance from the Commander, Naval Base, San Diego, Calif.

(3) The regulations in this section shall be enforced by the Commandant, 11th Naval District, San Diego, Calif., and such agencies as he may designate.

[30 FR 4756, Apr. 14, 1965]

§ 207.612b Pacific Ocean off Point Loma, Calif.; naval restricted area.

(a) *The area.* The waters of the Pacific Ocean within an area extending southerly from Point Loma, California, described as follows: Beginning at latitude 32°39'54", longitude 117°13'18"; thence southeasterly to latitude 32°34'31", longitude 117°09'41"; thence 270° true to longitude 117°16'40"; thence due north to latitude 32°39'54"; and thence 90° true to the point of beginning.

(b) *The regulations.* (1) No vessel shall anchor within the restricted area at any time without specific permission of the enforcing agency.

(2) Dredging, dragging, seining, and other similar operations within the restricted area are prohibited.

(3) The regulations in this section shall be enforced by the Commandant, Eleventh Naval District, San Diego, California, and such agencies as he may designate.

[17 FR 4346, May 13, 1952. Redesignated at 30 FR 4756, Apr. 14, 1965]

§ 207.613 Pacific Ocean; U.S. Navy restricted area in vicinity of Scripps Institution of Oceanography Pier, La Jolla, Calif.

(a) *The restricted area.* An area in the Pacific Ocean at La Jolla, California, bounded as follows: Beginning at the seaward end of the Scripps Institution of Oceanography Pier, about 1.5 miles northeast of Point La Jolla Light; thence 205°07' true, 1,000 feet; thence 270°00' true, 4,009 feet; thence

00°00″ true, 2,628 feet; thence 78°34′ true, 3,568 feet; thence 138°00′ true, 2,040 feet; thence 205°07′ true, 1,009 feet, to the point of beginning. The corners of the restricted area will be plainly marked with lighted marker buoys by the United States Navy.

(b) *The regulations.* (1) No vessels, other than vessels operated by or for the United States or the Scripps Institution of Oceanography, shall anchor within the restricted area at any time.

(2) Dredging, dragging, seining, other fishing operations, and other activities not under the direction of the United States or the Scripps Institution of Oceanography, which might foul underwater installations within the restricted area, are prohibited.

(3) All vessels entering the restricted area, other than vessels operated by or for the United States or the Scripps Institution of Oceanography, shall proceed across the area by the most direct route and without unnecessary delay.

(4) This section shall be enforced by the Commandant, Eleventh Naval District, San Diego, California, and such agencies as he may designate.

[13 FR 3695, July 2, 1948]

§ 207.613a Pacific Ocean, U.S. Marine Corps Base, Camp Pendleton, California; restricted area.

(a) *The area.* Beginning at the shoreline north of the boat basin, latitude 33°13′10″, longitude 117°24′19″; thence westward to latitude 33°12′48″, longitude 117°24′56″; thence southward to latitude 33°12′32″, longitude 117°24′44″; thence eastward to latitude 33°12′47″, longitude 117°24′17″ (a point on the breakwater); thence northeastward along breakwater to latitude 33°12′58″, longitude 117°24′09″; thence northward along shoreline to point of beginning.

(b) *The regulations.* (1) No vessels shall anchor within the restricted area at any time.

(2) Dredging, dragging, seining, fishing operations, and other activities, which might foul underwater installations within the restricted area, are prohibited.

(3) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(4) The regulations in this section shall be enforced by the Commanding General, U.S. Marine Corps Base, Camp Pendleton, California, and such agencies as he may designate.

[24 FR 1214, Feb. 17, 1959]

§ 207.613b Pacific Ocean, Camp Pendleton Boat Basin, U.S. Marine Corps Base, Camp Pendleton, Calif.; restricted area.

(a) *The area.* All of the waters of Camp Pendleton Boat Basin entrance channel lying northerly of a line between a light on the north Camp Pendleton jetty at latitude 33°12′22″, longitude 117°24′07″, and a light on the north Oceanside Harbor groin at latitude 33°12′29″, longitude 117°23′55″.

(b) *The regulations.* (1) The area is reserved exclusively for use by vessels owned or operated by the Federal Government. Permission to enter the area must be obtained from the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding General, U.S. Marine Corps Base, Camp Pendleton, California, or such agencies as he may designate.

[28 FR 13784, Dec. 19, 1963]

§ 207.614 Pacific Ocean off the east coast of San Clemente Island, Calif.; naval restricted area.

(a) *The area.* The waters of the Pacific Ocean within an area extending easterly from the east coast of San Clemente Island, California, described as follows: The northerly boundary to be a continuation, to seaward of the existing southerly boundary of the Naval Restricted Anchorage Area, as described in § 202.218 of this chapter (Anchorage Regulations), to latitude 33°00.3′ N., longitude 118°31.1′ W.; thence to latitude 32°58.6′ N., longitude 118°30.0′ W.; thence to latitude 32°57.9′ N., longitude 118°31.3′ W. on the shoreline; thence northerly along the shoreline to point of beginning.

(b) *The regulations.* (1) No vessels, other than Naval Ordnance Test Station craft, and those cleared for entry by the Naval Ordnance Test Station, shall enter the area at any time except

in an emergency, proceeding with extreme caution.

(2) Dredging, dragging, seining or other fishing operations within these boundaries are prohibited.

(3) No seaplanes, other than those approved for entry by Naval Ordnance Test Station, may enter the area.

(4) The regulations in this section shall be enforced by security personnel attached to the U.S. Naval Ordnance Test Station, China Lake, California, and by such agencies as may be designated by the Commandant, Eleventh Naval District, San Diego, California.

[23 FR 2098, Mar. 29, 1958, as amended at 27 FR 12368, Dec. 13, 1962]

§ 207.615 Pacific Ocean around San Nicolas Island, Calif., naval restricted area.

(a) *The area.* The waters of the Pacific Ocean around San Nicolas Island, Calif., extending about 3 miles seaward from the shoreline, described as follows:

	Latitude	Longitude
Point A	33°10'10"	119°24'20"
Point C	33°10'10"	119°31'10"
Point D	33°12'00"	119°35'30"
Point E	33°14'20"	119°37'40"
Point F	33°16'40"	119°38'10"
Point G	33°19'10"	119°37'10"
Point I	33°20'10"	119°31'10"
Point K	33°17'40"	119°24'50"
Point L	33°13'50"	119°21'50"

(b) *Sections of area.* (1) ALPHA section is the northerly section of the area, and is described as follows:

	Latitude	Longitude
Point G	33°19'10"	119°37'10"
Point I	33°20'10"	119°31'10"
Point J	33°18'18"	119°26'29"
Point O	33°15'43"	119°28'40"
Thence northwesterly along shoreline to Point N		
Point N	33°16'30"	119°30'40"
Point G	33°19'10"	119°37'10"

(2) BRAVO section is the westerly section of the area, and is described as follows:

	Latitude	Longitude
Point N	33°16'30"	119°30'40"
Thence westerly, southerly and easterly along the shoreline to Point M		
Point M	33°13'10"	119°29'40"
Point B	33°10'10"	119°29'40"
Point C	33°10'10"	119°31'10"
Point D	33°12'00"	119°35'30"
Point E	33°14'20"	119°37'40"
Point F	33°16'40"	119°38'10"
Point G	33°19'10"	119°37'10"
Point N	33°16'30"	119°30'40"

(3) CHARLIE section is the easterly section of the area, and is described as follows:

	Latitude	Longitude
Point J	33°18'18"	119°26'29"
Point O	33°15'43"	119°28'40"
Thence easterly, southerly and westerly along the shoreline to Point M		
Point M	33°13'10"	119°29'40"
Point B	33°10'10"	119°29'40"
Point A	33°10'10"	119°24'20"
Point L	33°13'50"	119°21'50"
Point K	33°17'40"	119°24'50"
Point J	33°18'18"	119°26'29"

(c) *Markers.* Range markers, as delineated below, are installed at Points M, N, and O for navigational purposes to indicate the boundaries between sections ALPHA, BRAVO, and CHARLIE.

(1) At Point M two triangular markers are installed facing southward, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, each pole being located on the line of longitude 119°29'40" W. and near the southerly shoreline at latitude 33°13'10" N. The southernmost marker is 20 feet below the other.

(2) At Point N two triangular markers are installed facing northwesterly, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, the poles being located near the northwesterly shoreline at latitude 33°16'30" N. and longitude 119°30'40" W. The northernmost marker is 20 feet below the other.

(3) At Point O two triangular markers are installed facing northeasterly, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, the poles being located near the northeasterly shoreline at latitude 33°15'43" N. and longitude 119°28'40" W. The northernmost marker is 20 feet below the other.

(d) *The regulations.* (1) No seaplanes, other than those approved for entry by the Commander, Pacific Missile Range (COMPMR) may enter any section of the area.

(2) Subject to the provisions of paragraph (d)(4) of this section, relating to sections BRAVO and CHARLIE, no vessels other than Pacific Missile Range craft and those cleared for entry by COMPMR, or the Officer-in-Charge, San Nicolas Island shall enter any section of the area at any time except in an emergency, proceeding with extreme caution.

(3) Dredging, dragging, seining, or other fishing operations within ALPHA section of the area are prohibited at all times.

(4) Dredging, dragging, seining, or other fishing operations are allowed within the boundaries of BRAVO and CHARLIE sections at all times except when declared closed by COMPMR. Notice that sections BRAVO and/or CHARLIE are closed to fishing shall be given by publication of notices to mariners, or may be obtained by monitoring standard Coast Guard radio broadcasts or by contacting the Pacific Missile Range by telephone or radio. Boats must remain at least 300 yards from the shoreline of San Nicolas Island at all times. Nothing in this provision shall be construed as authorization for personnel to land on San Nicolas Island, except in an emergency.

(5) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Range, Point Mugu, Calif., and by such agencies as may be designated by the Commandant, 11th Naval District, San Diego, Calif.

[30 FR 2260, Feb. 19, 1965]

§ 207.617 Long Beach Harbor, Calif.; naval restricted area.

(a) *The area.* All the waters between the Navy mole and Terminal Island to the westward of longitude 118°13'10".

(b) *The regulations.* (1) The area is reserved exclusively for use by naval vessels. Permission to enter the area must be obtained from the enforcing agency.

(2) The regulations in this section shall be enforced by the Commander, U.S. Naval Base Los Angeles, Long Beach, California, and such agencies as he may designate.

[19 FR 891, Feb. 17, 1954, as amended at 27 FR 12368, Dec. 13, 1962]

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, Calif.

(a) *San Francisco Bay north of Alcatraz Island; submarine operating area*—(1) *The area.* Bounded as follows: North boundary, latitude 37°50'38"; east boundary, longitude 122°25'00"; south boundary, latitude 37°50'00"; west boundary, longitude 122°26'10";

(2) *The regulations.* Prior notification of the dates and times of all operations will be made by local notice to mariners. A patrol boat will direct the movement of vessels passing in the vicinity of the operating area by means of signal light and loud hailer. Vessels traversing this area shall be alert and comply with the orders of the patrol boat. The regulations in this paragraph shall be enforced by the Commandant, Twelfth Naval District, and such agencies as he may designate.

(b) [Reserved]

(c) *San Francisco Bay in vicinity of Hunters Point; naval restricted area*—(1) *The area.* Bounded by the shore of the San Francisco Naval Shipyard and the following lines: Beginning at a point on the northerly shore of the Shipyard bearing 292°40', 950 yards, from Hunters Point Light; thence 35°27', 730 yards to the U.S. Pierhead Line; thence 142° 55', 1,300 yards, along the Pierhead Line; thence 180°, 2,450 yards, to the San Francisco-San Mateo County Line; thence 270°, 430 yards, along the County Line; thence

305°27', 1,313 yards, to and along the southwesterly side of South Basin; and thence due north, 413 yards, to the southwesterly shore of the Shipyard.

NOTE: All bearings in this section are referred to true meridian.

(2) *The regulations.* No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commander, San Francisco Naval Shipyard, shall navigate, anchor, or moor in this area.

(d) *San Francisco Bay at South San Francisco; seaplane restricted area*—(1) *The area.* Bounded by the westerly shore of South San Francisco Bay and the following lines: Beginning at a point on shore bearing 152°30', 1,750 yards, from Aviation Beacon "Aero" at San Francisco Airport; thence to points which are the following bearings and distances from Aviation Beacon "Aero": 99°30', 9,070 yards; 81°30', 6,530 yards; 41°30', 6,100 yards; and 347°30', 3,400 yards.

(2) *The regulations.* No surface watercraft shall be operated or anchored in this area except by specific permission of the Commanding Officer, Coast Guard Air Station, South San Francisco. Persons desiring to navigate vessels across the area shall give advice of their intention to do so and make request to the Commanding Officer not less than four hours in advance of the time they desire to take the vessel across the area.

(e) [Reserved]

(f) *San Francisco Bay and Oakland Inner Harbor; restricted areas in vicinity of Naval Air Station, Alameda*—(1) *The areas.* (i) The waters of San Francisco Bay within 100 yards of the Naval Air Station, Alameda.

(ii) The waters of the entrance channel to Oakland Inner Harbor (San Antonio Estuary) between the westerly end of the rock wall on the south side of the channel and the easterly boundary of the Naval Air Station.

(2) *The regulations.* (i) No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commanding Officer, U.S. Naval Air Station, Alameda, California, shall navigate, anchor, or moor in the area described in paragraph (f)(1)(i) of this section.

(ii) No vessel without special authority from the Commander, Twelfth Coast Guard District, shall lie, anchor, or moor in the area described in paragraph (f)(1)(ii) of this section. Vessels may proceed through the entrance channel in process of ordinary navigation or may moor alongside wharves on the Oakland side of the channel.

(g) *Oakland Inner Harbor adjacent to Alameda Facility, Naval Supply Center, Oakland; restricted area*—(1) *The area.* Within 100 feet of the Alameda Facility wharf.

(2) *The regulations.* No vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commanding Officer, Naval Supply Center, Oakland, shall enter this area.

(g-1) *Oakland Harbor in vicinity of Naval Supply Center, Oakland; restricted area and navigation*—(1) *The area.* Bounded by the shore of the Naval Supply Center and the following lines: Beginning at a point on the north shore located at about latitude 37°48'26", longitude 122°19'34"; thence 225°12', 290 yards; and thence 173°10', 620 yards to a point on the south shore at about latitude 37°48'02", longitude 122°19'39".

(2) *The regulations.* (i) No vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commanding Officer, Naval Supply Center, Oakland, shall enter this area.

(ii) All vessels over 1,000 tons displacement, bound for the Naval Supply Center, Oakland, shall use a qualified pilot regularly licensed for the waters of Oakland Harbor.

(g-2) *Oakland Outer Harbor adjacent to the Military Ocean Terminal, Bay Area, Pier No. 8 (Port of Oakland Berth No. 10); restricted area*—(1) *The area.* Within 100 feet of the pier.

(2) *The regulations.* No vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commander, Oakland Army Base, shall enter this area.

(g-3) *Oakland Outer Harbor adjacent to the Oakland Army Base; restricted area*—(1) *The area.* Within 100 feet of the wharves, piers or shore.

(2) *The regulations.* No vessel or other craft, except vessels of the U.S.

Government or vessels duly authorized by the Commander, Oakland Army Base, shall enter this area.

(h) *San Francisco Bay between Treasure Island and Yerba Buena Island; naval restricted area*—(1) *The area.* All the water of the cove bounded by the south shore of Treasure Island, the north shore of Yerba Buena Island, and the connecting causeway, west of a line extending from the southeast corner of the most southerly of the four finger piers along the east side of Treasure Island, at about latitude 37°49'11", longitude 122°21'40", approximately 153°20' to the northeasterly point of Yerba Buena Island, at about latitude 37°48'55", longitude 122°21'30".

(2) *The regulations.* No vessel or other craft, except vessels owned or operated by the United States Government or vessels duly authorized by the Commanding Officer, Naval Station, Treasure Island, shall enter the restricted area.

(i) *San Francisco Bay adjacent to northeast corner of Treasure Island; naval restricted area*—(1) *The area.* Beginning at the intersection of Pier 21 and the bulkhead line, thence northwesterly along the bulkhead to the northernmost point of Treasure Island; thence 288° true, 290 yards; thence 26° true, 475 yards; thence 115° 30' true, 520 yards; thence 152° true, 500 yards to Pier 21; thence along the pier to the point of beginning.

(2) *The regulations.* No vessels, except those engaged in naval operations, shall lie, anchor, moor or unnecessarily delay in the area. Vessels may pass through the area in the process of ordinary navigation except as directed by patrol boats. The regulations in this paragraph shall be enforced by the Commandant, Twelfth Naval District, and such agencies as he may designate.

(j) *San Francisco Bay in vicinity of the NSC Fuel Department, Point Molate restricted area*—(1) *The area.* Bounded by the easterly shore of upper San Francisco Bay and the following lines: Beginning at a point on shore bearing 17° 800 yards, from "Tree" at Molate Point thence 270°, 870 yards; thence 189° 1,100 yards; and thence 123° to the shore.

(2) *The regulations.* Vessels not operating under supervision of the local military or naval authority or public vessels of the United States shall not enter this area except by specific permission of the Commanding Officer, Naval Supply Center, Oakland.

(k) [Reserved]

(l) *San Pablo Bay, Carquinez Strait, and Mare Island Strait in vicinity of U.S. Naval Shipyard, Mare Island; restricted area*—(1) *The area.* The waters of San Pablo Bay, Carquinez Strait, and Mare Island Strait, within 100 yards of the shore of that part of the Navy Yard, Mare Island, south of the causeway between the City of Vallejo and Mare Island and extending continuously therefrom southeasterly, southwesterly, and northwesterly around the Navy Yard to its northwesterly limit on the waters of San Pablo Bay, and the waters within 50 yards of any part of the berthing piers at the Navy Yard.

(2) *The regulations.* No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commander, Mare Island Naval Shipyard, Vallejo, California, shall navigate, anchor, or moor in this area.

(m) [Reserved]

(n) *Suisun Bay at Naval Weapons Station. Concord; restricted area*—(1) *The area.* Beginning at a point on the shore and on the easterly side of the mouth of a small slough (known as Hastings Slough) bearing 189°, 2,412 yards from Tripon at Preston Point on Roe Island; thence 340°30', 400 yards, to the shore line of the westerly of the two Seal Islands; thence 60°30', 940 yards; thence 75°, 1,650 yards; thence 102°, 1,850 yards; thence 99°, 1,880 yards; thence 180°, 435 yards, to the shore line; thence following the high water shore line in a general westerly direction to the point of beginning.

(2) *The regulations.* Vessels and other craftnot operating under the authority of the local military or naval authority shall not enter, lie to, anchor, or moor in this area except by specific permission of the Commanding Officer, Naval Weapons Stations, Concord.

(o)—(p) [Reserved]

(q) *Sacramento Deep Water Ship Channel Barge Lock and Approach Canals; use, administration and navigation*—(1) *General.* The lock, its approach channels and all its appurtenances, including the highway and railroad bridge, shall be under the jurisdiction of the District Engineer, U.S. Army Engineer District, Sacramento, Federal and Courts Building, 650 Capitol Avenue, Sacramento, California. His designated representative at the locality shall be the lockmaster, who will be in immediate charge of movement and position of all water traffic while at or near the locks and in the barge canals.

(2) *Immediate control.* The lockmaster shall be charged with the immediate control and management of the lock, bridge, and of the area set aside as the lock area, including the entrance channels. He shall see that all laws, rules and regulations for the use of the lock, bridge and the lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the Government lock area. Crews shall render such assistance in the lockage of their craft as may be required by the lockmaster.

(3) *Signals*—(i) *Sound.* All craft desiring lockage shall signal by two long blasts followed by two short blasts of the whistle, delivered at a distance of one-half mile from the lock. When the lock is ready for entrance, notice will be given by one long blast from the control house. Permission to leave the lock will be one short blast given by the lockmaster.

(ii) *Visual lock traffic signals.* Visual signals are located outside of each lock gate on the north guide wall, and will be used in conjunction with sound signals. When the red light is flashing, lock cannot be made ready for entrance immediately, vessel must stand clear. When the amber light is flashing, lock is being made ready, prepare for lockage. When the green light is flashing, lock is ready for entrance, the vessel may proceed with caution into the lock.

(iii) *Visual river traffic signals.* Visual signals are located on the south bank of the barge canal at the confluence with the Sacramento River and also 1,950 feet upstream on the west bank of the Sacramento River. When the red light is on, a river-bound vessel of a size making passing in the canal hazardous is in the lock or canal. Approaching vessel shall stand clear of canal to permit out-going vessel to pass. When the amber light is on, a river-bound vessel of a size to permit passing is in the lock or canal. Vessel may enter canal with caution. When the green light is on, vessel may enter canal and proceed under full control.

(iv) *Radio.* The lock is equipped with two-way radio operating on a frequency of 156.60 mc. The frequency is monitored by the lock personnel. Vessels equipped with two-way radio may communicate with the crew operating the lock but communications or signals so received will only augment and not replace the sound and visual signals.

(4) *Permissible dimensions of vessels and tows.* The lock chamber has a maximum usable width of 86 feet and length of 600 feet. The sill at the harbor end and the bottom of the lock chamber are −13.0 feet elevation, CofE datum, and usually provides a depth of water ranging from 14.0 feet at LLW to 19.4 feet at HHW, with greater depths during large floods in the delta. The sill at the river end is at −10.0 feet elevation, CofE datum, and usually provides a depth of water ranging from 14.6 feet at LLW to 16.8 feet at HHW, with greater depths when the river is high. The depth of water at any time is indicated by staff gages located on the south wall of the lock, riverward and harborward of each lock gate and at the center of the lock. A vessel must not attempt to enter the lock if its beam or length is greater than indicated above, or if its draft exceeds the depth of water indicated by the gages, with due allowance for clearance.

(5) *Precedence at lock.* Ordinarily, craft will be locked through in order of arrival; however, depending upon whether the lock is full or empty, this precedence may be modified at the discretion of the lockmaster if boats are approaching from the opposite direction and are within reasonable distance of the lock at the time of the ap-

proach by the first boat. When several craft are to pass, precedence shall be given as follows:

First: Government owned or controlled craft.
Second: Commercial craft.
Third: Passenger boats.
Fourth: Small vessels and pleasure boats.

(6) *Loss of turn.* Boats that fail to enter the lock with reasonable promptness, after being authorized to do so, shall lose their turn.

(7) *Multiple lockage.* The lockmaster shall decide whether one or more vessels may be locked through at the same time.

(8) *Speed.* Vessels shall not be raced or crowded alongside another in the barge canals. When entering the barge canals and lock, speed shall be reduced to a minimum consistent with safe navigation. As a general rule, when a number of vessels are entering the lock, the following vessel shall remain at least 200 feet astern of the vessel ahead. No overtaking, except when directed by lockmaster, will be permitted.

(9) *Lockage of small boats*—(i) *General.* The lockage of pleasure boats, skiffs, fishing boats and other small craft will be coordinated with the lockage of commercial craft. If no commercial craft are scheduled to be locked through within a reasonable time, not to exceed one hour after the arrival of the small craft at the lock, separate lockage will be made for such small craft.

(ii) *Signals.* Small boats desiring to use the lock will sound two long blasts followed by two short blasts of the horn. When the lock is ready for entrance, the lockmaster will notify the small boat by one long blast of the horn; or through the public address system. Permission to leave the lock will be given by the lockmaster by one short blast of the horn.

(10) *Mooring in lock.* All boats, when in the lock, shall be moored to the fastenings provided for that purpose, by bow and stern lines and other spring lines as may be necessary, and the lines shall not be let go until the signal is given by the lockmaster for the craft to leave the lock.

(11) *Waiting for lockage.* The mooring or anchoring of boats or other craft in the approaches to the lock, where such mooring will interfere with navigation of the lock is prohibited. All boats, barge tows and other craft to be passed through the lock shall lie in designated waiting areas in such manner as not to interfere with the navigation of the lock or its approaches, and, if a barge tow is to be divided into sections for locking, the sections shall be brought into the lock as directed by the lockmaster. After passing through the lock, the sections shall be reassembled at such a distance from the entrance as not to obstruct or interfere with navigation of the lock or its approaches.

(12) *Delay in lock.* Boats or barges must not obstruct navigation by unnecessary delays in entering or leaving the lock.

(13) *Damage to lock or other structures.* The regulations contained in this paragraph shall not relieve the owners and operators of vessels from liability for any damage by their operations to the lock or other structures. They must use great care not to strike any part of the lock, any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the banks of the approach canals. All boats with metal nosings or projecting irons, or rough surfaces that would be liable to damage the gates or lock walls, will not be permitted to enter the lock unless provided with suitable buffers and fenders.

(14) *Tows.* Tows shall be made up outside the canal entrance. All vessels engaged in towing other vessels not equipped with a rudder shall use two tow lines or a bridge and one tow line. If the vessel in tow is equipped with a rudder, one tow line may be used. All tow lines or hawsers must be hauled as short as practicable for safe handling of tows.

(15) *Crew to move craft.* The pilots in charge of tows and persons in charge of other craft must provide a sufficient number of men to handle lines in mooring craft and to move barges and other craft into and out of the lock easily and promptly.

(16) *Handling valves, gates, bridges and machinery.* No person, unless authorized by the lockmaster shall open or close any bridge, gate, valve or oper-

ate any machinery in connection with the lock; but the lockmaster may, under emergency conditions, call for assistance from the master of any boat using the lock, should such aid be necessary, and when rendering such assistance, the man so employed shall be strictly under the orders of the lockmaster.

(17) *Landing of freight.* No one shall land freight or baggage on or over the walls of the lock so as in any way to delay or interfere with navigation or the operation of the lock.

(18) *Refuse in lock.* No material of any kind shall be thrown or discharged into the lock, and no material of any kind shall be deposited into the lock area.

(19) *Statistics.* On each passage through the locks, as required by section 11 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C.A. 555) the master or clerk of any vessel or other craft shall furnish; upon prescribed forms provided for the purpose and obtainable at the locks, a statement of the passengers, freight and tonnage and such other statistical information as may be required by the forms.

(20) *Persistent violation of regulations.* If the owner or pilot of any boat persistently violates the regulations of this paragraph after due notice of the same, lockage may be refused by the lockmaster at the time of the violation or subsequent thereto, as required in the interest of public safety or protection of Government property.

(21) *Other laws and regulations.* In all other respects, the existing Federal laws, rules and regulations affecting navigable waters of the United States will govern in the use, administration and navigation of the ship channel, lock and its approaches.

[26 FR 11201, Nov. 28, 1961, as amended at 27 FR 4737, May 18, 1962; 27 FR 10484, Oct. 27, 1962; 28 FR 8461, Aug. 17, 1963; 31 FR 6590, May 3, 1966; 33 FR 14166, Sept. 19, 1968; 42 FR 17120, Mar. 31, 1977; 42 FR 57962, Nov. 7, 1977]

§ 207.655 Rogue River, Oregon; logging.

The dumping of logs into the Rogue River or upon its banks, below the high waterline, and the rafting of logs, or floating of loose logs, sack rafts of timber and logs, and the towing of log rafts on Rogue River, is hereby limited to the period from 1 November of each year to 31 March of the following year (both dates inclusive). Parties engaged in logging operations on the Rogue River shall arrange their work so that the river shall be free from floating logs or debris caused by their operation from 1 April to 31 October of each year (both dates inclusive).

[24 FR 3629, May 6, 1959]

§ 207.660 Coquille River, Oreg.; logging on North Fork between its mouth and Gravel Ford, at the junction of the North and East Forks.

During the 144 hours extending from midnight of each Wednesday to midnight of the following Tuesday loose timber and logs, and sack rafts (so called) of timber and logs, may be run, and parties engaged in this business may use the waterway in such reasonable manner as may be necessary for the proper transaction of such business: *Provided,* That during any other period than that designated above said parties shall so arrange their work as to leave the channel of said section of the river free from floating logs and timber and shall not obstruct or delay any other navigation interest.

[Regs., June 7, 1904]

§ 207.663 South Fork of Coos River, Oreg.; logging in tidal section.

(a) During the months of August, September, and October loose timber and logs and sack rafts of timber and logs, hereinafter referred to as logs, may be floated in the tidal section of the South Fork of Coos River above the mouth of Bessie Creek, at the times and under the conditions hereinafter prescribed, on Monday only of each week: *Provided,* That if it is impracticable because of insufficient streamflow above the tidal section to float logs into the tidal section on any Monday, they may be floated in the tidal section, at the times and under the conditions hereinafter prescribed, on the first day between that Monday and the following Monday when the streamflow will permit.

(b) From November to July, both inclusive, logs may be floated in the tidal section of the South Fork of Coos River above the mouth of Bessie Creek, at the times and under the conditions prescribed in paragraphs (c) to (j) of this section on Tuesday and Friday only of each week.

(c) On any of the days designated in paragraphs (a) and (b) of this section when the floating of logs is permitted in the tidal section above the mouth of Bessie Creek, they may be floated into the tidal section, at or near the head of tidewater, not more than two hours before the time of high tide at the point of entry, and be floated to the mouth of Bessie Creek: *Provided,* That such movement is handled expeditiously, and is entirely completed within five hours after the time of high tide at the point of entry.

(d) Two high tides normally occur each day. The high tide upon which logs may be floated into the tidal section above the mouth of Bessie Creek shall be the tide that reaches high slack at the point of entry nearest 12:00 o'clock meridian, Pacific standard time. The time of high tide at the head of the tidal section, for the purpose of this section, shall be considered as two hours and forty minutes after the predicted time of high tide at Humbolt Bay, California, the port of reference for Coos Bay, as published by the Coast and Geodetic Survey, Department of Commerce.

(e) In order that the river may be cleared in advance of an anticipated freshet, whenever the river stage above the tidal section rises more than two feet above the normal winter level as determined by the District Engineer, Corps of Engineers, in charge of the waterway, logs may be floated in the tidal section above the mouth of Bessie Creek.

(f) A single floating sheer boom shall be swung across the river above the mouth of Bessie Creek, at a location approved by the District Engineer, for the purpose of catching logs being floated as prescribed in paragraph (e) of this section: *Provided,* That such boom shall be in place only during the period in which the floating of logs is under way: *Provided further,* That at all times when such boom is swung across the river so as to obstruct or interfere with navigation a competent operator shall be in attendance who shall, upon the approach of any craft or tow desiring to pass either upstream or downstream, promptly swing the boom so as to clear the channel and allow such craft or tow to pass.

(g) A written or printed notice giving the day and hour at which time the floating of logs is contemplated in accordance with paragraphs (a) and (b) of this section shall be posted at least twenty-four hours prior thereto at such place at or near the mouth of the South Fork as shall be prescribed by the District Engineer, and shall also be attached to the warning flag pole provided for in paragraph (h) of this section.

(h) At all times between sunrise and sunset when logs are being moved in the tidal section above the mouth of Bessie Creek, and during a period of three hours before such movement is to begin, a red flag not less than three feet square shall be flown from a staff on the river bank near the mouth of Bessie Creek, so located that it can be plainly seen by operators of river craft proceeding upstream in that vicinity, and said flag shall not be flown at any time other than herein designated. Between sunset and sunrise a red light, instead of a red flag, shall be so displayed. After completion of each movement of logs the red signal shall be promptly removed.

(i) In that portion of the South Fork below the mouth of Bessie Creek, the floating of logs shall be prohibited at all times, and rafts shall not exceed 650 feet in length and 45 feet in width.

(j) This section shall not affect the liability of persons in charge of logging operations for any damages resulting therefrom.

[12 FR 2603, Apr. 23, 1947]

§ 207.680 Willamette River, Oreg.; use, administration, and navigation of canal and locks at Willamette Falls, Oreg.

(a) *Administration*—(1) *Administrative jurisdiction.* The canal and locks and all appurtenances shall be in charge of the District Engineer, Portland District, Corps of Engineers, De-

partment of the Army, 628 Pittock Block, Portland, Oregon. The representative of the District Engineer at the locality shall be the lockmaster, who shall receive his orders and instructions from the District Engineer. In case of emergency, however, the lockmaster shall have authority to take such steps as may be immediately necessary without waiting for instruction from the District Engineer.

(2) *Operational jurisdiction.* The lock master shall be charged with the immediate control and management of the canal and locks and the grounds and public property pertaining thereto. He shall see that all laws, rules and regulations, for the use of the canal and grounds are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the canal and locks or grounds pertaining thereto, whether navigating the canal or not. In case of the absence or disability of the lock master, his duty shall be performed by an assistant or other employee to be designated by the District Engineer.

(b) *Use and navigation*—(1) *Authority of lock master.* The lock master or his assistants shall direct the movement, operation, and moorage of all vessels, boats, rafts, barges, or other floating things using the locks, while they are in the locks, the canal basin, or in either the upstream or downstream lock approaches. Crews of vessels, boats, rafts, barges, or other floating things seeking lockage shall render such assistance as the lock master or his assistants may require.

(2) *Signals.* All vessels desiring lockage shall signal the same by one long and one short blast of the whistle, delivered at a distance of approximately 1,000 feet from the locks. Requests for lockage may also be made by telephoning or otherwise notifying the lock master's office. Notice to vessels desiring lockage will be given by red and green traffic lights. Vessels may enter locks on green lights, but must await green signal when lights are red. Permission to leave the lock will be given in the same manner. In the event a failure occurs and the referenced lights cannot be operated, the lock master will indicate by voice or by hand or lantern signals when vessels may enter or leave the locks.

(3) *Controlling dimensions.* For lockage purposes the maximum length of space available is 175 feet and the maximum clear width available is 37 feet. All vessels, boats, rafts, barges, or other floating things of less size than the foregoing dimensions can pass through the locks. The controlling water depth over the intermediate miter sills throughout the locks is 6.5 feet. However, the depth on the sill of the upstream gate at low water is 7.5 feet and over the downstream sill is 8.4 feet. The elevation of the upstream sill is 43.7 feet and of the downstream sill is −6.4 feet, corresponding to the elevations shown on the gages provided at both the downstream and upstream approaches to the locks. All vessels, boats, rafts, barges, and other floating things of which the dimensions or draft are greater than will permit clearing any of the above indicated elevations shall be prohibited from entering the locks. All vessels, boats, rafts, barges or other floating things entering the locks in violation of the above shall be responsible for all resulting damages.

(4) *Precedence at locks.* Ordinarily the vessel, boat, raft, barge, or other floating thing arriving first at the lock will be locked through first. In the event of a simultaneous approach from opposite directions ascending craft will ordinarily be locked through first. When several boats are to be passed through the locks, the order of precedence shall be as follows:

(i) To boats owned by the United States or employed upon river and harbor improvement work.

(ii) To passenger boats.

(iii) To freight and tow boats.

(iv) To rafts.

(v) To small vessels and pleasure craft.

The lock master shall have authority to digress from the above precedence in order to eliminate reversing the flow of traffic through the locks when both upbound and downbound lockages are in waiting.

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(5) *Entrance to locks.* The lock master shall decide whether one or more vessels may be locked through at the same time. No one shall attempt to enter the locks with a vessel or attempt to cause a vessel to enter the locks until he is authorized by the lock master to do so. No one shall take a vessel, or cause a vessel to be taken, within the limits of 500 feet above the upper gate and 300 feet below the lower gate, except for the purpose of entering the locks; and not for this purpose until it has been indicated to him by a proper person by signal that the lock is ready to receive the vessel. All vessels within the foregoing limits must be operated under "slow bell" and be kept constantly under control.

(6) *Lockage of small boats.* Pleasure boats, skiffs, fishing boats, and other small craft may be passed through the locks singularly, in groups, or as part of a lockage of other than pleasure craft. A continual flow of traffic in one direction will not be interrupted or reversed to accommodate these small pleasure boats. However, any such small boat will be accommodated at such time as the lock master upon receipt of a request for lockage deems such action will not interfere with other traffic. The decision of the lock master shall be final as to whether craft requesting lockage is defined as a pleasure boat.

(7) *Use of canal and locks.* No person, unless authorized by the lock master or his assistants, shall open or close any bridge, lock gate, wicket gate, or operate any lock machinery, or in any way interfere with any mechanism or appliance connected with the operation of the locks, nor shall anyone interfere with the employees in the discharge of their duties. The lock master or his assistants may call for aid from the persons in charge of any craft, vessel, or raft using the lock, should such aid be necessary. Persons rendering such assistance shall be strictly under the orders of the lock master. The Government reserves the right to refuse lockage to any vessel, craft or raft when the persons in charge thereof refuse to give such assistance when it is requested. The persons in charge of vessels with tows or rafts, barges and other craft must provide sufficient personnel, lines and towing equipment of sufficient power to insure at all times full control of such tows, rafts, barges and other craft while moving into and through the locks, unless otherwise prearranged with the lock master. A copy of these regulations shall be kept at all times on board each vessel regularly engaged in navigating the locks. Copies may be obtained without charge from the lock master or from the District Engineer, Corps of Engineers, Department of the Army, 2850 SE. 82d Avenue, Post Office Box 2946, Portland, Oreg. 97208.

(8) *Petroleum vessels.* All tankers, barges, and other floating equipment, used for transporting inflammable liquids, either with or without cargo, shall be equipped with fixed timber fenders and, if not so equipped, shall have aboard an adequate number of suitable fenders of timber, rubber, or rope which are to be placed between the vessel and unfendered lock structures. All such barges or other vessels navigating without power within the canal or locks must be assisted by one or more tugs of sufficient power to insure full control at all times whether passing upstream or downstream through the locks with or without cargo.

(9) *Mooring in locks.* All boats, barges, rafts, and other craft when in the locks shall be moored by head and spring lines and such other lines as may be necessary to the fastenings provided for that purpose; and the lines shall not be unloosed until the signal is given for the vessel to leave the lock.

(10) *Mooring while waiting for lockage.* The mooring of boats, tows or other craft in the approaches to the locks where such mooring will interfere with navigation or other vessels to or from the locks is prohibited.

(11) *Delays.* Boats, barges, rafts, or other craft must not obstruct navigation by unnecessary delay in entering or leaving the locks. Vessels failing to enter the locks with reasonable promptness, when signaled to do so, and vessels arriving at the locks with their tows in such shape so as to

impede lockage shall forfeit their turn.

(12) *Landing of freight.* No freight or baggage shall be unloaded on or over the walls of the canal or locks. Freight and baggage consigned to the Willamette Falls locks shall be unloaded only at such places as may be provided for this purpose or as directed by the lock master.

(13) *Refuse in canal or locks.* No refuse or other material shall be thrown or dumped from vessels into the canal and locks, or deposited in the lock area, or placed on the berm of the canal so that it is liable to be thrown or washed into the waterway. Violations of this paragraph (b)(13) shall be subject to sections 13 and 16 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 407, 411).

(14) *Damage to locks or other structures.* The regulations contained in this section shall not affect the liability of the owners and operators of vessels for any damage caused by their operations to the locks or other structures. Persons in charge of vessels and log rafts passing through the locks must use great care to prevent the vessels or log rafts from striking any gate or appurtenance thereto. All boats or barges with metal nosings, or projecting irons, or rough surfaces, and log rafts with dragging cables that may damage any part of the lock structures will not be permitted to enter the locks unless said craft are provided with suitable protective buffers and fenders and log rafts are free of loose, dragging cables.

(c) *Statistics.* Masters or pursers of vessels shall, upon each passage through the locks or upon each passage to an intermediate point of terminus within the locks system, furnish the lock master with information concerning the number of passengers, the amount of freight, the net registered tonnage and such other statistics as may be required on the prescribed forms which shall be furnished by the lock master for this purpose. Failure to furnish such information shall be construed as sufficient cause to refuse the offending vessel passage through the locks.

(d) *Trespass.* No one shall trespass on the grounds or buildings, and everyone shall be deemed guilty of trespass within the meaning of this paragraph who shall willfully or carelessly damage or disfigure the canal and locks or any part thereof, or any building or appliance on the grounds, or who shall carry on business or trading of any sort, or shall build any fishing stand or lead, or set any fish net within the limits of the reservation, or do any act to or on the grounds or buildings which would be recognized by law as a trespass.

(e) *Definitions.* Except as otherwise provided in paragraph (b)(6) of this section, whenever such a word as "vessel", "boat", "barge", "raft", or the like is used in this section, it shall include all types of floating things which may be subject to lockage. Failure to refer specifically to a type of floating thing by its name shall not mean exclusion thereof from applicability of this section.

[19 FR 5816, Sept. 9, 1954, as amended at 35 FR 14988, Sept. 26, 1970]

§ 207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oregon and Washington.

(a) *General.* All locks, approach channels, and all lock appurtenances, shall be under the jurisdiction of the District Engineer, Corps of Engineers, U.S. Army, in charge of the locality. His representative at the locks shall be the Project Engineer, who shall issue orders and instructions to the Lock Master in charge of the lock. Hereinafter, the term "Lock Master" shall be used to designate the person in immediate charge of the lock at any given time. In case of emergency and on all routine work in connection with the operation of the lock, the Lock Master shall have authority to take action without waiting for instructions from the Project Engineer.

(b) *Lockage control.* The Lock Master shall be charged with immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. Upstream and downstream approach channels extend to the end of the wing or the guide wall, whichever is longer. At Bonneville lock the upstream approach channel extends to

the upstream end of Bradford Island and the downstream approach channel extends to the downstream end of the lower moorage. The Lock Master shall demand compliance with all laws, rules and regulations for the use of the lock and lock area and is authorized to issue necessary orders and directions, both to employees of the Government or to other persons within the limits of the lock or lock area, whether navigating the lock or not. Use of lock facilities is contingent upon compliance with regulations, Lock Master instructions and the safety of people and property.

(c) *Authority of Lock Master.* No one shall initiate any movement of any vessel in the lock or approaches except by or under the direction of the Lock Master. ("Vessel" as used herein includes all connected units, tugs, barges, tows, boats or other floating objects.)

(d) *Signals*—(1) *Radio.* All locks are equipped with two-way FM radio operating on channel 14, frequency of 156.700 MHz, for both the calling channel and the working channel. Vessels equipped with two-way radio desiring a lockage shall call WUJ 33 Bonneville, WUJ 34 The Dalles, WUJ 35 John Day, WUJ 41 McNary, WUJ 42 Ice Harbor, WUJ 43 Lower Monumental, WUJ 44 Little Goose, or WUJ 45 Lower Granite, at least one-half hour in advance of arrival since the Lock Master is not in constant attendance of the locks. Channel 14 shall be monitored constantly in the vessel pilot house from the time the vessel enters the approach channel until its completion of exit. Prior to entering the lock chamber, the commercial freight or log-tow vessel operator shall report the nature of any cargo, the maximum length, width and draft of the vessel and whether the vessel is in any way hazardous because of its condition or the cargo it carries or has carried.

(2) *Pull-cord signal stations.* Pull-cord signal stations marked by large instructional signs and located near the end of the upstream and downstream lock entrance walls may be used in place of radios to signal the Lock Master for a lockage.

(3) *Entering and exit signals.* Signal lights are located outside each lock gate. When the green (go) light is on, all vessels will enter in the sequence prescribed by the Lock Master except at Bonneville where freight and log-tow vessels only will enter on the amber light. When the red (stop) light is on, the lock is not ready for entrance and vessels shall stand clear. In addition to the above visual signals, the Lock Master will signal that the lock is ready for entrance by sounding one long blast on the lock air horn. The Lock Master will signal that the lock is ready for exit by lighting the green exit light and sounding one short blast on the air horn.

(4) *Craft lockage-readiness signal.* Upon query from Lock Master, a vessel operator will signal when he is properly moored and ready for the lockage to begin.

(e) *Permissible dimensions of vessels.* Nominal overall dimensions of vessels allowed in the lock chamber are 84 feet wide and 650 feet long, except at Bonneville where these dimensions are 74 feet wide and 500 feet long. Depth of water in the lock depends upon river levels which may vary from day to day. Staff gauges showing the minimum water level depth over gate sills are located inside the lock chamber near each lock gate and outside the lock chamber near the end of both upstream and downstream guide walls. Vessels which do not have a draft of at least one foot less than an gauge reading shall not pass that gauge. Information concerning allowable draft for vessel passage through the locks may be obtained from the Lock Master. Minimum lock chamber water level depth is 15 feet except at Ice Harbor where it is 14 feet and at Bonneville where it is 24.2 feet. When the river flow at Lower Granite exceeds 330,000 cubic feet per second the normal minimum 15-foot depth may be decreased to as little as eight feet. At Bonneville, a tow may be rearranged to less than clear lock dimensions (74 feet by 500 feet) prior to entering the lock, and be passed in one lockage. Such rearrangements at Bonneville May be done at the moorage in the downstream lock approach channel or above the upstream guide wall and with the Lock Master's permission at the upstream guide wall. In consideration of river

and swing bridge traffic at Bonneville the Lock Master may authorize rearrangement of vessels within the lock chamber only when both miter gates at the open end of the lock are in their recesses in the lock walls and rearrangement will not be hazardous to them. Vessels wider than 50 feet will not be permitted to enter the Bonneville Lock during extreme high water when tailwater at the lock is higher than 35 feet above m.s.l. since the downstream guide wall will be inundated.

(f) *Precedence at lock.* Ordinarily, the vessel or tow arriving first at the lock will be locked through first; however, depending upon whether the lock is full or empty this precedence may be modified at the discretion of the Lock Master. When several vessels are waiting for a lockage, precedence shall be given as follows:

First: Vessels owned or operated by the United States whose mission requires immediate passage.

Second: Commercial freight and log-tow vessels.

Third: All other vessels.

(g) *Loss of turn.* Vessels that fail to enter the lock with reasonable promptness, after being authorized to do so, shall lose their turn.

(h) *Lockage*—(1) *Multiple lockage.* The Lock Master shall decide whether one or more vessels or tows may be locked through at the same time. Vessels with flammable or highly hazardous cargo will be passed separately from all other vessels. Hazardous materials are described in Part 171, Title 49, Code of Federal Regulations. Flammable materials are defined in the National Fire Code of the National Fire Protection Association.

(2) *Small craft.* At the discretion of the Lock Master, the lockage of pleasure, fishing, and other small vessels may be coordinated with the lockage of commercial vessels. If no commercial craft is scheduled to be locked through within a reasonable time, not to exceed one (1) hour after arrival of the small craft at the lock, separate lockage will be made for such small craft.

(i) *Mooring in approaches prohibited.* Mooring or anchoring in the approaches to the lock is prohibited where such mooring will interfere with navigation.

(j) *Waiting for lockage.* Vessels waiting for lockage shall wait in the clear outside of the lock approach channel, or contingent upon permission by the Lock Master, may at their own risk, lie inside the approach channel at a place specified by the Lock Master. At Bonneville, vessels may at their own risk, lay-to at the downstream moorage facility on the south shore downstream from the guide wall: *Provided,* That a 100-foot-wide open channel is maintained and vessels upstream may lay-to against the guide wall, at their own risk, provided they remain not less than 400 feet upstream of the upstream lock gate; or contingent upon prior radio clearance by the Lock Master they may, at their own risk, tie to the upstream guide wall.

(k) *Mooring in lock.* All vessels must be moored within the lock chamber so that no portion of any vessel extends beyond the lines painted on the lock walls. Moorage within the lock chamber will be to floating mooring bits only and will be accomplished in a proper no-slip manner. Small vessels will not be locked with a large vessel unless the large vessel is so moored (two mooring bits) that no lateral movement is possible. The vessel operator will constantly monitor the position of his vessel and his mooring bit ties to assure that there is no fore or aft movement of his vessel and lateral movement is minimized. Propulsion by vessels within the lock chamber will not be permitted during closure operation of a lock chamber gate or as otherwise directed by the Lock Master.

(l) *Crew to move craft.* During the entire lockage, the vessel operator shall constantly attend the wheelhouse, be aware of the vessel's position, and monitor radio channel 14 on frequency 156.700 MHz, or otherwise be constantly able to communicate with the Lock Master. At a minimum, vessels shall be as vigilantly manned as if underway.

(m) *Speed.* Vessels shall be adequately powered to maintain a safe speed and be under control at all times. Vessels shall not be raced or crowded alongside another in the approach channels. When entering the lock,

speed shall be reduced to a minimum consistent with safe navigation. As a general rule, when a number of vessels are entering the lock, the following vessel shall remain at least 200 feet astern of the vessel ahead.

(n) *Delay in lock.* Vessels shall not unnecessarily delay any operation of the locks.

(o) *Landing of freight.* No freight, baggage, personnel, or passengers shall be landed on or over the walls of the lock, except by permission and direction of the Lock Master.

(p) *Damage to lock or other structures.* The regulations in this section shall not relieve owners and/or operators of vessels from liability for any damage to the lock or other structures or for the immediate removal of any obstruction. No vessel in less than stable floating condition or having unusual sinking potential shall enter the locks or its approaches. Vessels must use great care not to strike any part of the lock, any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the banks of the approach channels. All vessels with projecting irons, or rough surfaces which may damage the gates or lock walls, shall not enter the lock unless provided with suitable buffers and fenders. Vessels having chains, lines, or drags either hanging over the sides or ends or dragging on the bottom for steering or other purposes will not be permitted to pass.

(q) *Tows.* Prior to a lockage, the person in charge of a vessel towing a second vessel by lines shall, at a safe distance outside of the incoming approach channel, secure the second vessel to the towing vessel and keep it secured during the entire course of a lockage and until safely clear of the outgoing approach channel.

(r) *Violation of regulations.* Any violation of these regulations may subject the owner or master of any vessel to any or all of the following: (1) Penalties prescribed by law of the United States Government (33 U.S.C. Part 1); (2) Report of violation to the titled owner of the vessel; (3) Report of violation to the U.S. Coast Guard; (4) Refusal of lockage at the time of violation.

(s) *Refuse in locks.* No material of any kind shall be thrown or discharged into the lock, or be deposited in the lock area. Vessels leaking or spilling cargo will be refused lockage and suitable reports will be made to the U.S. Coast Guard. Deck cargo will be so positioned so as not to be subject to falling overboard.

(t) *Handling valves, gates, bridges, and machinery.* No person, unless authorized by the Lock Master, shall open or close any bridge, gate, valve, or operate any machinery in connection with the lock. However, the Lock Master may call for assistance from the master of any vessel using the lock, should such aid be necessary; and when rendering such assistance, the person so employed shall be directly under the orders of the Lock Master. Masters of vessels refusing to provide such assistance when it is requested of them may be denied the use of the lock by the Lock Master.

(u) *Statistics.* On each passage through the lock, masters or pursers of vessels shall furnish to the Lock Master, a written statement of passengers, freight, and other information as indicated on forms furnished boat operators by the Lock Master.

(v) *Hazardous areas.* At McNary, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite Dams, all water from the downstream face of the dam to a line straight across the river at the downstream end of the downstream lock guide wall is considered hazardous and vessels may enter only at their own risk.

(w) *Restricted areas.* No vessel shall enter or remain in any restricted area at any time without first obtaining permission from the District Engineer, Corps of Engineers, U.S. Army, or his duly authorized representative.

(1) *At Bonneville Dam.* The waters restricted to only Government vessels are described as all waters of the Columbia River and Bradford Slough within 1,000 feet above and 2,000 feet below the powerhouse. The restricted areas will be designated by signs.

(2) *At the Dalles Dam.* The waters restricted to only Government vessels are described as all downstream waters other than those of the navigation lock downstream approach channel

which lie between the Wasco County Bridge and the project axis including those waters between the powerhouse and the Oregon shore and all upstream waters other than those of the navigation lock upstream approach channel which lie between the project axis and a line projected from the upstream end of the navigation lock guide wall to the junction of the concrete structure with the earth fill section of the dam near the upstream end of the powerhouse.

(3) *At the John Day Dam.* The waters restricted to only Government vessels are described as all of the waters within a distance of about 1,000 yards above the dam lying south of the navigation channel leading to the lock and bounded by a line commencing at the upstream end of the guide wall, and running in a direction 54°01'37" true for a distance of 771 yards, thence 144°01'37" true across the river to the south shoreline. The downstream limit is marked by orange and white striped monuments on the north and south shores.

(4) *At McNary Dam.* The waters restricted to only Government vessels are described as all waters within a distance of about 1,000 yards above the dam lying south of the guide wall and bounded by a line commencing at the upstream end of the guide wall and running in a direction 93°30' true for a distance of 495 yards, thence 175°15' true for 707 yards, thence 179°00' true for 441 yards, thence 235°00' true for 585 yards, thence 268°00' true for 146 yards to the head of the fishladder.

(5) *At Ice Harbor Dam.* The waters restricted to only Government vessels are described as the waters within a distance of about 800 yards upstream of the dam lying south of the navigation channel leading to the lock and bounded by a line commencing at the upstream end of the guide wall, and running a direction 83°00' true for a distance of 600 yards, thence 175°00' true for a distance of 250 yards, thence 241°00' true to the upstream face of the dam.

(6) *At Lower Monumental Dam.* The waters restricted to only Government vessels are described as the waters within a distance of about 1,200 yards upstream of the dam lying north of the navigation channel leading to the lock and bounded by a line commencing at the upstream end of the fixed guide wall and running in a direction 48°00' true for a distance of 340 yards, thence 326°00' true for a distance of 366 yards, thence 260°00' true for a distance of 160 yards, thence 270°00' true to the north shore.

(7) *At Little Goose Dam.* The waters restricted to only Government vessels are described as those within a distance of 800 yards above the dam lying north of the guide wall and bounded by a line commencing at the upstream end of the guide wall and running in a direction 64°13' true for a distance of 567 yards, thence 349°03' true for a distance of 610 yards to the north shoreline.

(8) *At Lower Granite Dam.* The waters restricted to only Government vessels are described as those within a distance of 800 yards above the dam lying south of the guide wall and bounded by a line commencing at the upstream end of the guide wall and running in a direction 136° true for a distance of 586 yards±, thence 214° true for a distance of 250 yards to the south shoreline.

Drawings which depict the hazardous and restricted areas in paragraphs (v) and (w) of this section are available from the District Engineers for areas within their respective jurisdictions.

[43 FR 3115, Jan. 23, 1978]

§ 207.720 Willapa Bay and tributaries, Wash.; logging.

(a) The floating of loose logs, or sack rafts of timber and logs, is prohibited in Willapa Bay and at or below points on tributary streams as specified in the following list:

North Fork of Willapa River, below Willapa city.

South Fork of Willapa River, below a point 1 mile above the Northern Pacific Railway bridge.

North River, below the lower end of McGowan's boom, about 1 mile above mouth.

Smith Creek, at its mouth.

Querquellin River, at its mouth.

Palix River, at its mouth.

North Nemah River, below the boom of the Nemah River Logging Co., about 1 mile above mouth.

South Nemah River, at its mouth.

Nasel River, below Nasel boom, about 3 miles above mouth.

Bear River, below new county bridge, about 3 miles above mouth.

(b) Hemlock logs that will not float with at least 6 inches of butt out of water shall not be floated in any of the streams tributary of Willapa Bay, and no boat shall tow any raft containing any log of this character, unless such log is securely fastened so as to prevent its escape from the raft.

[Regs., June 23, 1922, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.730 Grays Harbor and tributaries, Wash.; logging.

(a) Before operating on Grays Harbor or tributary streams all loggers, river drivers, log towboats, and log towboat companies shall register at the United States Engineer Office, Seattle, Wash., giving the firm name, name of manager, and post office address. They shall also register annually thereafter on July 1 of each year.

(b) No logs shall be dumped into the rivers or released from storage or sorting booms without being turned over to a registered driving or towboat company, firm, or individual.

(c) River drivers authorized to operate on the streams tributary to Grays Harbor must maintain a sufficient organization of boats and experienced workmen to care for the drivers of their customers.

(d) River drivers shall so conduct their operations that all parts of the rivers upon which they operate will be effectively patrolled and the formation of jams prevented.

(e) Should a blockade of logs occur below the head of tidewater in any of the rivers at any time, each logger operating on the river above the location of said blockade shall discontinue dumping logs into the river until the blockade shall be broken.

(f) Log drivers must not indifferently operate or delay the transit of logs.

(g) Loggers who entrust their logs to river drivers will be required to satisfy themselves that their logs are being driven in accordance with this section.

(h) The floating of loose logs or of sack rafts of timber and logs is prohibited in the Chehalis River below Preachers Slough; in the Hoquiam River below the forks; and also in the Wishkah River below a point 4 miles above the mouth.

(i) The floating of rafts or tows of timber and logs which exceed 700 feet in length and 60 feet in width is prohibited in the Chehalis River between the Oregon-Washington Railroad Co. bridge at Aberdeen and the Northern Pacific Railroad Co. bridge at Cosmopolis, and also in the Hoquiam River below the forks; and the floating of rafts or tows of timber and logs which exceed 700 feet in length and 55 feet in width is prohibited in the Wishkah River below the North Aberdeen Bridge.

(j) Hemlock logs that will not float with at least 6 inches of butt out of water shall not be floated in any of the streams tributary to Grays Harbor, and no boat shall tow any raft containing any log of this character unless such log is securely fastened so as to prevent its escape from the raft.

[Regs., Oct. 4, 1920, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.750 Puget Sound Area, Wash.

(a) *Strait of Juan de Fuca, eastern end; off the westerly shore of Whidbey Island; naval restricted areas*—(1) *Area No. 1.* Bounded by a line commencing at latitude 48°20′57″ N., longitude 122°40′39″ W.; thence to latitude 48°20′40″ N., longitude 122°42′59″ W.; thence to latitude 48°21′19″ N., longitude 122°43′02″ W.; thence to latitude 48°21′13″ N., longitude 122°40′26″ W.; and thence along the shore line to the point of beginning.

(2) *Area No. 2.* Bounded by a line commencing at latitude 48°21′53″ N., longitude 122°40′00″ W.; thence to latitude 48°23′12″ N., longitude 122°41′17″ W.; thence to latitude 48°23′29″ N., longitude 122°40′22″ W.; thence to latitude 48°22′21″ N., longitude 122°39′50″ W.; and thence along the shore line to the point of beginning.

(3) *The regulations.* (i) Vessels shall not enter these areas except at their own risk.

(ii) All vessels entering these areas shall be obliged to comply with orders received from naval sources pertaining to their movements while in the areas.

(iii) The regulations in this paragraph shall be enforced by the Commandant, 13th Naval District, or his authorized representative.

(b) [Reserved]

(c) *Admiralty Inlet, entrance; naval restricted area*—(1) *The area.* Beginning at Point Wilson Light thence southwesterly along the coast line to latitude 48°07′ N.; thence northwesterly to a point at latitude 48°15′ N. longitude 123°00′ W.; thence due east to Whidbey Island; thence southerly along the coast line to latitude 48°12.5′ N.; thence southerly to the point of beginning.

(2) *The regulations.* (i) Use of any equipment such as anchors, fishing gear, grapnels, etc., which may foul underwater installations within the restricted area, is prohibited. Dumping of any non-buoyant objects in this area is prohibited.

(ii) The regulations of this paragraph shall be enforced by the Commandant, Thirteenth Naval District, or his duly appointed representative.

(d) (1)—(6) [Reserved]

(7) *Statistics.* At the end of each month masters or clerks of vessels or boats that have used the canal during the month shall report to the District Engineer, U.S. Army Engineer District, Seattle, upon prescribed forms, a statement of passengers, freight, and registered tonnage, and such other statistical information as may be required by the blank forms which are issued to them for that purpose.

(8) *Trading, landing, etc.* No business, loading, or landing of freight or baggage will be allowed on or over the canal piers or bulkheads.

(9) *Refuse.* No person shall throw material of any kind into the canal.

(10) [Reserved]

(11) *Obstructions.* On the canal's being obstructed by a vessel, raft, or other craft, by sinking, grounding, or otherwise, the District Engineer, Seattle, shall be notified by telephone or telegraph as soon as possible by the person in charge of the obstructing vessel, raft, or craft.

(e) *Hood Canal, Bangor; Naval restricted areas*—(1) *Area No. 1.* That area bounded by a line commencing on the east shore of Hood Canal at latitude 47°43′28″N; thence 270° true to latitude 47°43′28″N, longitude 122°44′40″W; thence to latitude 47°43′50″N, longitude 122°44′40″W; thence to latitude 47°44′24″N, longitude 122°44′22″W; thence to latitude 47°45′47″N, longitude 122°43′22″W; thence to latitude 47°46′23″N, longitude 122°42′42″W; thence to latitude 47°46′23″N, longitude 122°42′20″W; thence 125° true to the high tide line; thence southerly along the shoreline to the point of beginning.

(2) *Area No. 2.* Waters of Hood Canal within a circle of 1,000 yards diameter centered on a point located at latitude 47°46′26″N, longitude 122°42′49″W.

(3) *The regulations*—(i) *Area No. 1.* No vessel shall enter this area without permission from the Commandant, Thirteenth Naval District, or his/her authorized representative.

(ii) *Area No. 2.* (A) The area will be used intermittently by the Navy for magnetic silencing operations.

(B) Use of any equipment such as anchors, grapnels, etc., which may foul underwater installations with the restricted area, is prohibited at all times.

(C) Dumping of any nonbuoyant objects in this area is prohibited.

(D) Navigation will be permitted with that portion of this circular area, not lying within Area No. 1 at all times except when magnetic silencing operations are in progress.

(E) When magnetic silencing operations are in progress, use of the area wil be indicated by display of quick flashing red beacons on the pier located in the southeast quadrant of the area.

(F) The regulations in this paragraph shall be enforced by the Commandant, Thirteenth Naval District, or his/her authorized representative.

(f) [Reserved]

(g) *Lake Washington Ship Canal; use, administration and navigation*—(1) *Definitions.* The term "canal" as used in the regulations in this paragraph shall include the water area in the locks and the channel and adjacent waters from a point 5,500 feet

northwest of the Burlington Northern, Inc. railway bridge to the east end of the channel opposite Webster Point, Lake Washington. The term "canal grounds" shall include all grounds set aside for the use of the canal or occupied in its construction.

(2) *Supervision.* The canal and all its appurtenances shall be under the supervision of the District Engineer, Corps of Engineers, Seattle. The District Engineer will detail as many assistants as may be necessary for the efficient operation of the canal and the enforcement of the regulations in this paragraph. The movement of all vessels and other floating things in the canal and approaches thereto shall be under the direction of the District Engineer and his authorized assistants. All orders given under the regulations to any master or person in charge of any vessel, raft, or other watercraft by the District Engineer or his authorized assistants, either in person or through any canal operative, shall be acknowledged and obeyed. Failure to see, understand, or comply with signals or instructions shall constitute a violation of the regulations. Any person refusing to comply with the regulations or any orders given in pursuance thereof may be denied the privileges of the canal or canal grounds.

(3) *Speed.* To avoid damage to other vessels and to property along the shores, all vessels shall proceed at reduced speed in the canal as fellows:

(i) From the west entrance of the Lake Washington Ship Canal to the western end of the west guide pier of the Hiram M. Chittenden Locks, and from the east end of the easternmost guide pier of said Locks to the white flashing dolphin located south of Webster Point on Lake Washington, including all of Salmon Bay, Lake Union, Portage Bay, and Union Bay, it shall be unlawful for any person to operate any watercraft or vessel at a speed in excess of 7 nautical miles per hour within 200 feet of any shoreline, pier, restricted area or shore installation.

(ii) From the western end of the aforesaid west guide pier to the eastern end of the aforesaid east guide pier at said Locks, it shall be unlawful for any person to operate any watercraft or vessel at a speed in excess of 4 nautical miles per hour.

NOTE: Signs are located along the canal to indicate permissible speeds.

(4) *Traffic signal lights.* In addition to the lock signal lights described in paragraph (g)(5)(ii) of this section, a red light, and a green light are installed on the west side of the Ballard Bridge, on the east side of the Fremont Bridge, 1,000 feet west of the Montlake Bridge, and 1,000 feet east of the Montlake Bridge, for the guidance of vessels approaching the sections of the canal between Salmon Bay and Lake Union and between Lake Union and Lake Washington, respectively. Vessels of 300 gross tons and over and all vessels with tows, except as hereinafter provided, shall not pass the red lights. The green lights will indicate that vessels may proceed. Vessels of less than 300 gross tons without tows may disregard these signals, but they shall travel at very slow speed when passing other vessels. Vessels of 300 gross tons and over and vessels with tows, except logs, whose destination is easterly between the Ballard Bridge and a point 2,500 feet east of the Ballard Bridge, may pass the red signals on the Ballard Bridge, provided, such passage will not interfere with approaching traffic.

(5) *Approaching and passing through locks*—(i) *Signals for locks.* Vessels with tows desiring to use the locks shall so indicate by two long and three short blasts of a whistle, horn, or megaphone. All other vessels desiring to use the locks shall so indicate by two long and two short blasts.

NOTE: The term "long blasts" means blasts of four seconds duration, and the term "short blasts" means blasts of one second duration. Signals for the opening of drawbridges are prescribed in § 117.795 of Chapter I.

(ii) *Lock signal lights.* Red and green signal lights are installed on the guide pier west of the Burlington Northern, Inc. railway bridge below the locks. The green light will indicate to vessels bound for the large lock that the lock has been made ready. If the red light is burning, vessels bound for the large

lock shall moor at the pier. Vessels bound for the small lock shall be guided into the small lock by traffic signals thereon. The masters of all vessels approaching the locks from Puget Sound shall be alert to receive and shall immediately comply with instructions by voice or signal from the employee on the west pier.

(iii) *Precedence at locks.* All vessels approaching the locks shall stop at the points indicated by signs placed on the canal piers or as directed by a lockman until ordered to proceed into the lock. Unless otherwise directed by the District Engineer or his authorized assistants, vessels owned or operated by the United States or the City of Seattle and passenger vessels operating on a regular schedule shall have precedence over all others in passing through the locks. Registered merchant vessels shall have precedence over pleasure craft, which shall pass through in the order of their arrival at the locks, and both shall have precedence over vessels towing floated timber or logs. Tows of floated timber and logs may be denied the use of the locks during certain hours when both locks are busy passing other traffic. However, advance notice will be given towboat companies as to the periods when log tows will be denied lockage.

(iv) *Entering locks.* Masters of vessels shall exercise the greatest care when entering either lock. The forward movement of vessels while taking position in the locks shall be very slow, and boats entering the small lock shall reduce their speed to not more than two and one-half miles per hour when within 200 feet of the outer gate and come to practically a full stop before entering the lock so that in case the engine mechanism fails to operate properly the momentum of the boat may be stopped easily by its lines. The masters of vessels entering either lock from either direction shall be alert to receive and shall immediately comply with instructions by voice or signal from the lock attendants.

(v) *Mooring in locks.* Vessels entering the locks shall be equipped with adequate lines, at least 50 feet in length being required fore and aft. While in the large lock vessels and rafts will be moored at the top of the lock wall. While in the small lock vessels shall be moored to the floating mooring wall. Lines shall not be released until the signal has been given by the lock force to leave the lock, after which there shall be no delay in leaving. All vessels not equipped to handle tie-up lines with power winches shall be equipped with suitable mooring lines of manila, or other suitable fiber, of sufficient size and strength to hold the vessel against the currents to be met within the lock chamber. The use of wire rope for tie-up by vessels not equipped to handle such lines with power winches is prohibited. Vessels may be denied the use of the locks if their lines are not in good condition, or if the mooring bits on barges are not accessible or are not equipped to prevent lines from slipping off when the water is lowered in the lock. All vessels entering the locks should have, in addition to the master, at least one person on deck to handle lines. Mates and deckhands, when preparing to moor within the lock chambers, should not throw heavy mooring lines at the lockmen on the walls, but should wait for a heaving lie to be passed to them unless otherwise directed. All towboat crews, while locking or moving a tow out of the lock chamber, should station themselves so as to preclude the possibility of being injured by the parting of cable or lines under strain. Persons attempting to take vessels through the locks without assistance on deck may be required to wait until the lock is clear of other traffic before passing through. All operators of vessels are especially cautioned to use extreme care while crowded in the locks to avoid accident or fire on their boats. Under no circumstances will small craft, such as rowboats, launches and houseboats, or any other type of pleasure boats, be locked through with barges used for carrying any type of petroleum product or other hazardous material. At the discretion of the lockmaster, small craft as described above may be locked through with barge tows containing other than dangerous material. Operators of small vessels and larger vessels operating in the proximity of each other shall be alert to the danger arising from the limited maneuverability

of the larger vessels, and shall exercise all precautions to prevent accident.

(6) *Damage to locks or other structures.* (i) The regulations in this paragraph shall not affect the liability of the owners and operators of vessels for any damage caused by their operations to the locks or other structures. The sides and corners of all vessels and rafts passing through the locks should be free from spikes or projections of any kind which might damage the locks or other structures. Vessels with appurtenances or projections which might damage the locks or other structures shall be fitted with adequate fenders. Lockage of leaking vessels or vessels with overhanging loads may be refused. Such barge or craft shall be moored in a location outside of the channel approach to the lock so as to not interfere with passing navigation. Vessels of unusual dimensions, or other characteristics which, in the opinion of the lockmaster, pose a threat to the integrity or safety of the locks or canal will be refused passage until written permission to pass is provided by the District Engineer. Sufficient written data and drawings shall be provided the District Engineer that an engineering determination can be made as to the safety of the vessel. The District Engineer shall have the right to inspect any such vessels prior to passage. The operators of all vessels shall use care to avoid striking the guide walls or other structures pertaining to the canal.

(ii) In the interest of safety and fire prevention, all woven rope fenders used with barges carrying flammable cargo should be water-soaked or otherwise fireproofed prior to entering the lock approaches.

(iii) Burning fenders should be dropped overboard immediately rather than being placed on the deck of a barge or towboat.

(iv) A minimum of one man with a portable fender shall be stationed at the head end of every tow of hazardous cargo and at the aft if the lockmaster so directs so as to protect the lock and guide walls from damage while entering or departing the lock structures.

(v) All cylinder or containers holding gases under pressure, or any other chemical or substance, shall be securely fastened to the hull of the vessel to prevent their rolling overboard into the lock chamber and becoming a hazard.

(vi) All containers holding paint, gasoline or other volatile materials shall be securely fastened with tight-fitting covers. To preclude a concentration of potentially explosive vapors, no paint will be allowed to be applied to the exterior of vessel hulls, houses, machinery, or other equipment while the vessels are in the lock chamber.

(vii) All hatches of tank barges must be closed prior to entering lock. Tank barges with open hatch or hatches will be denied lockage.

(viii) No smoking will be permitted aboard vessels with cargoes of fuel or explosives.

(ix) All vessels carrying hazardous cargoes shall so be identified with the lockmaster. They shall be in compliance with Department of Transportation (U.S. Coast Guard) regulations (CFR Title 46, Parts 30 thru 40, Parts 146 thru 154, and 49 CFR Parts 171 thru 179 and shall accordingly carry required markings. All DOT safety regulations for transit of hazardous cargoes shall be adhered to, whether or not specifically cited or duplicated herein.

(7) *Commercial statistics.* (i) On each passage through the locks, as required by section 11 of the River and Harbor Act of September 22, 1922 (42 Stat. 1043; 33 U.S.C. 555), the master or clerk of any vessel or other craft other than pleasure vessel shall furnish, upon prescribed forms provided for the purpose and obtainable at the locks, a statement of the passengers, freight, and tonnage, and such other statistical information as may be required by the forms. The total cargo carried must be reported showing separately the tonnage in transit, and the tonnage, kind, and destination of cargo to be unloaded.

(ii) Reports of log rafts passing through the canal shall show the number of sections in the lock at each passage and, in the case of boom sticks, poles, or piles, the number of sticks in the tow. For logs, poles, or piles in cribs or in built-up rafts of

more than one layer, the report shall show the total board feet in the raft.

(iii) Except by special permit, no vessel other than pleasure craft will be allowed to pass through the lock until a correct statement is furnished of the passengers, freight, and tonnage, and such other statistical information as may be required by the prescribed forms provided for the purpose.

(8) *Rafts.* (i) No log raft exceeding 700 feet in length or 76 feet in width shall pass through the canal. Boom sticks shall be smooth, with rounded ends, and securely tied together with cables, chains, or log swifters to prevent the raft from spreading while in the lock. Rafts containing logs that do not float above water for their entire length, or are in danger of being submerged when they enter fresh water, shall not be towed in the canal until such logs are securely fastened so as to prevent their escape from the raft.

(ii) Whenever required, log rafts passing in through the lock will be given a number that shall be fastened on one of the logs in the raft. This number will identify the raft and shall not be removed until the logs are used.

(iii) Two floats are maintained in Shilshole Bay near the entrance of the canal channel to facilitate the handling of logs in the canal. Rafts bound for the canal may be moored at one of these floats, only the portion of the raft that is to be taken through at a single lockage being brought into the canal. The remainder of the raft may be left at the float until the first portion has been towed to its destination above the lock.

(9) *Tows.* All vessels engaged in towing shall use tow lines of the least practicable length and shall have full control of their tows at all times. Towing more than one craft abreast is forbidden if the total width of the tow, including the towboat, exceeds 70 feet.

(10) *Obstructing navigation.* (i) All vessels and tows passing through the canal shall be kept as close as practicable to the center or, when safer, to the right side of the waterway, except when passing other craft or preparing to moor at a pier or wharf. Slowly moving log rafts, tows, or vessels shall, whenever practicable, pull out of the way when meeting other vessels or when other traffic proceeding in the same direction desires to pass. Vessels are forbidden to obstruct the canal in any way or to delay by slow passage through the canal the progress of other vessels. Small and readily maneuverable vessels operating in the vicinity of larger, less maneuverable vessels shall, in all cases, keep clear and operate with caution in order that the larger vessels may maintain safe steerage way and that hazards to all vessels may be reduced. All vessels shall operate with extreme caution and movements shall be made only when adequate precautions for the safety of other vessels and property are being effectively employed.

(ii) The placing of logs, vessels, or other floating objects within the limits of the dredged channels or anywhere in the canal where they may interfere with navigation to or from piers or industrial plants is prohibited.

(11) *Turning.* Vessels exceeding 100 feet in length shall not turn around, or attempt to turn around, in the concrete revetted portions of the canal at the Fremont Cut or Portage Cut sections of the canal.

(12) *Excessive working of propellers or engines.* Excessive working of the propellers of a vessel for purposes of testing or for other purposes when this creates objectionable or dangerous currents in the canal is forbidden. In case of grounding, the rapid or strong working of the vessel's engines is forbidden.

(13) *Landing or mooring.* No business, trading, or landing of passengers, freight, or baggage will be allowed on or over the canal piers or lock walls, or over the piers or grounds forming a part of the canal or its appurtenances. All persons in charge of or employed on any boat are prohibited from landing or mooring such boat at any of the canal piers, unless in transit through the canal or specially permitted to do so by the District Engineer or his authorized assistants.

(14) *Deposit of refuse.* The deposit, either from watercraft or from the shore, of any oil or refuse matter in the canal or upon the canal grounds is prohibited, nor shall water discharged from the side of a vessel be allowed to spill on the lock wall.

(15) *Aids to navigation.* Persons in charge of log rafts or other tows, and the masters of vessels and boats using the canal, shall keep a careful watch when passing buoys or other aids to navigation and promptly report to the District Engineering or his authorized assistants any displacement or damage to such aids.

NOTE: Aids to navigation and other related data are shown on Nautical Chart No. 18447 published by the National Ocean Survey.

(16) *Operation of salt water barrier in the large lock of the Hiram M. Chittenden Locks.* (i) A salt water barrier is installed across the east end of the large lock. This barrier, while in the depressed position, reduces the depth of the water available at the east end of this chamber from 36 feet to 33.75 feet at low lake elevation (20 feet above MLLW). In the raised position, the depth of water will be reduced to 16 feet. In comparison, the depth of water available for navigation at the west end of the large lock chamber is 29 feet at mean lower low water. The purpose of this barrier is to reduce salt water intrusion into Lake Washington through normal operations of the locks.

(ii) The least depth of water available over the barrier when raised will be shown on signs placed near the ends of the guide piers to the large lock. A yellow light mounted on these signs will be lighted only while the barrier is in a raised position.

(iii) Vessels transiting the lock from east to west having draft requirements that exceed the water depth available over the barrier will advise the lockmaster by sounding one long and two short blasts of a horn or whistle. When the yellow light is extinguished on the signboard, the operator of the vessel may assume the barrier has been lowered.

(iv) Vessels transiting the lock from west to east having draft requirements that exceed the depth available over the intrusion barrier will advise the lockmaster by sounding one long and two short blasts of a horn or whistle. A yellow light mounted on a standard on the south lock wall and opposite the intrusion barrier will be lighted only when the barrier is in the raised position.

(v) It shall be the responsibility of the vessel operator to satisfy himself of the position of this barrier prior to passing over it.

(h)—(i) [Reserved]

(j) *Port Orchard; naval restricted area*—(1) *The area.* Shoreward of a line beginning at a point on the west shoreline of Port Orchard bearing 90° from stack (at latitude 47°42′01″, longitude 122°36′54″); thence 90°, approximately 190 yards, to a point 350 yards from stack; thence 165°, 6,000 yards, to a point bearing 179°, 1,280 yards, from Battle Point Light; thence westerly to the shoreline at latitude 47°39′08″ (approximate location of the Brownsville Pier).

(2) *The regulations.* (i) No vessel shall, at any time, anchor or tow a drag of any kind in this area.

(ii) The regulations in this paragraph shall be enforced by the Commandant, Thirteenth Naval District, or his authorized representative.

(k) *Sinclair Inlet; naval restricted areas.* (1) Area No. 1. All the waters of Sinclair Inlet westerly of a line drawn from the Bremerton Ferry Landing (approximately latitude 47°33′49″ N., longitude 122°37′19″ W.) southeasterly to the shoreline at latitude 47°32′53″ N., longitude 122°36′54″ W.

(2) Area No. 2. That area of Sinclair Inlet to the north and west of an area bounded by a line commencing at latitude 47°33′44″ N., longitude 122°37′27″ W.; thence to latitude 47°33′40″ N., longitude 122°37′22.5″ W.; thence to latitude 47°33′24″ N., longitude 122°37′41″ W.; thence to latitude 47°33′20″ N., longitude 122°38′08″ W.; thence to latitude 47°33′08″ N., longitude 122°38′25″ W.; thence to latitude 47°33′08″ N., longitude 122°38′54″ W.; thence to latitude 47°33′05″ N., longitude 122°39′02.5″ W.; thence to latitude 47°33′05″ N., longitude 122°39′37″ W.; and thence along the shoreline to the point of beginning. This line is located approximately 100 yards from the southerly end of the Naval Shipyard piers, drydocks or shoreline.

(3) *The regulations.* (i) Area No. 1. No vessel of more than 100 gross tons shall enter this area or navigate therein without permission from the enforcing agency.

(ii) Area No. 2. Vessels and other craft, except those under the supervision of local military or naval authority, public vessels, and Horluck Transportation Company, Inc., and Washington State Ferries, shall not enter this area without permission from the enforcing agency.

(iii) The regulations in this paragraph shall be enforced by Commandant, Thirteenth Naval District, or his authorized representative.

(l) *West Waterway, Seattle Harbor; navigation.* (1) The movement of vessels of 250 gross tons or over and all vessels with tows of any kind through the narrow section of West Waterway between the bend at Fisher's Flour Mill dock and the bend at the junction of East Waterway with Duwamish Waterway, and through the draws of the City of Seattle and Northern Pacific Railway Company bridges crossing this narrow section, shall be governed by red and green traffic signal lights mounted on the north and south sides of the west tower of the City Light power crossing at West Spokane Street.

(2) Two green lights, one vertically above the other, displayed ahead of a vessel, shall indicate that the waterway is clear. Two red lights, one vertically above the other, displayed ahead of a vessel, shall indicate that the waterway is not clear.

(3) A vessel approaching the narrow section and drawbridges from either end of the waterway shall give one long blast of a whistle and shall not enter the narrow section until green lights are displayed.

(4) One vessel may follow another vessel in either direction, but the channel shall not be kept open in the same direction for an unreasonable time if a vessel is waiting at the other end.

(5) Tugs, launches, and small craft shall keep close to one side of the channel when vessels or boats with tows are passing.

(6) All craft shall proceed with caution. The display of a green light is not a guarantee that the channel is clear of traffic, and neither the United States nor the City of Seattle will be responsible for any damage to vessels or other property which may be chargeable to mistakes in the operation of the signal lights or to their failure to operate.

(m) [Reserved]

(n) *Carr Inlet, naval restricted area*—(1) *The area.* The waters of Carr Inlet bounded on the southeast by a line running from Gibson Point on Fox Island to Hyde Point on McNeil Island, on the northwest by a line running from Green Point (at latitude 47°16'54" N., longitude 122°41'33" W.) to Penrose Point; plus that portion of Pitt Passage extending from Carr Inlet to Pitt Island, and that portion of Hale Passage extending from Carr Inlet southeasterly to a line drawn perpendicular to the channel 100 yards northwesterly of the Warren dock.

(2) *The regulations.* (i) The area shall be used as an acoustic range for research studies and special noise trials. No explosives shall be used.

(ii) No marine craft of any type shall at any time approach or remain within one hundred yards of the hydrophone buoys or the hydrophone cable connection house. The hydrophone buoys will be anchored in Carr Inlet on a line perpendicular to the course line opposite Ketner's Point, and about one mile from the Fox Island shore. The course line, or range, will bear 134°38'21" (314°38'21") true, and will be marked by range beacons erected near the shore line approximately one mile north-northeast of Steilacoom and approximately two miles north-northeast of Home. The cable connection house will be framed on piling in Carr Inlet approximately 20 yards off the Fox Island shore, opposite Ketner's Point.

(iii) The remainder of the area shall be open to navigation at all times except when the range is in use or when hydrophones are being calibrated. When the range is in use or hydrophones are being calibrated, revolving beacon lights will be displayed on the following signal towers:

Signal tower No.	Location	Visible sector (bearings true)
1	Gibson Point	039°–285°
2	Fox Island, 2,500 yards northwest of Ketner's Point	295°–111°

Signal tower No.	Location	Visible sector (bearings true)
3	Green Point	135°–339°
4	Penrose Point	319°–120°
		000°–050°
5	Pitt Island	199°–225°
6	Hyde Point	059°–23

The beacon lights on Towers Nos. 1, 4, 5, and 6 will be red, and on Towers Nos. 2 and 3 will be either red or green. The beacon lights will show 1 quick flash every 10 seconds. The lights will be obscured except for the above tabulated visible sectors. The ranging of vessels or calibration of hydrophones requiring restrictions will be conducted at intervals during two 3-hour periods, that is, between the hours of 9 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except for national holidays consisting of New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day, and will total approximately 150 days spread throughout the year. Shutting off of beacon lights will indicate termination of use of the range for the remainder of that period. Insofar as possible, the schedule of operations giving the days the range will be in use for each forthcoming month will be published in local newspapers and in the local U. S. Coast Guard Notice to Mariners.

(iv) When the red beacon lights are displayed indicating that the range is in use or hydrophones are being calibrated, navigation within the area will be restricted as follows:

(*a*) As used in this section, the words "operate, power vessel and non-power vessel" are defined as follows:

(*1*) "Operate": To be physically present in the designated area.

(*2*) "Power vessel": A vessel propelled principally by a mechanical propulsion system (i.e., gasoline, Diesel, steam or electric drive to a propeller, pump jet, paddle wheel or other device), and being propelled by that means.

(*3*) "Non-power vessel": A vessel not equipped with a mechanical propulsion system, such as a rowboat, canoe or sailboat propelled by oars, paddles, or sails, respectively.

(*b*) Power vessels shall not operate within the area, except that traffic in either direction between Hale Passage and upper Carr Inlet, within 200 yards of the low water mark off Green Point, will be cleared by signal for approximately 15 minutes total time within this area at the termination of individual ranging runs, while the vessel being ranged takes position for the next run. Clearance to traverse the area around Green Point will be indicated by extinguishing the red beacon lights and displaying the green beacon lights on Signal Tower No. 2 on Fox Island and Signal Tower No. 3 on Green Point.

(*c*) Non-powered marine craft shall not operate within one mile of the course line bearing 134°38′21″ (314° 38′21″) true, and within two miles to the southeast and two miles to the northwest of the hydrophone buoys situated in Carr Inlet opposite Ketner's Point: *Provided, however,* Non-powered craft may operate within four hundred yards of the low water mark on the northeast side of McNeil Island, within two hundred yards of the low water mark at Green Point, and within two hundred yards of the low water mark on the southwest shore of Fox Island except for maintaining the required one-hundred yard clearance around the cable connection house. (See paragraph (n)(2)(ii) of this section.)

(*d*) Towboats shall have free access and egress to designated tow havens within Carr Inlet, as follows: The Navy will establish and maintain suitable mooring buoys for the use of tugs and their tows at the following points: (*1*) Approximately 1,500 yards northwest of Gibson Point Light and approximately 400 yards offshore from the low water mark on the Fox Island shore; (*2*) approximately 1,500 yards northwest of Hyde Point and approximately 400 yards offshore from the low water mark on McNeil Island shore; (*3*) and at a point midway between the north point of Gertrude Island and the northwest point of Still Harbor. Towboats will signal by radio, telephone or visual flag hoist as far in advance as possible of the time they

enter the tow haven, such signals to be directed to the range instrument vessel to be located on the Fox Island side of Carr Inlet. The Navy shall promptly suspend operations when necessary to permit the access and egress of such tow traffic, and shall signal the tows when the area is clear.

(e) Through commercial traffic, including tows, to points within Carr Inlet, and through Carr Inlet, Pitt Passage and Hale Passage to adjacent waters will be permitted free access and egress, as follows: Such traffic will signal by radio, telephone or visual flag hoist as far in advance as possible of the time they enter the area, such signals to be directed to the range instrument vessel to be located on the Fox Island side of Carr Inlet. The Navy shall promptly suspend operations when necessary to permit the passage of such traffic, and the instrument vessel shall signal when the area is clear for passage.

(f) The warden of the McNeil Island penitentiary and his authorized representatives shall be permitted to operate within the area at any time, as may be necessary, for the patrol and search for escaped convicts.

(g) Red or green signal flags will be displayed on the signal towers in case of failure of the red or green beacon lights. The display of the signal flags at the top of the flag masts will have the same significance as the beacon lights.

(3) The regulations in this paragraph shall be enforced by the Commandant, Thirteenth Naval District, and such agencies as he may designate.

(o) *Dabob Bay, Whitney Point, Naval Restricted Area*—(1) *The area.* Beginning at the high water line along the westerly shore of Dabob Bay, 100 yards northerly of the Naval control building located at approximately N. latitude 47°45′36″ and W. longitude 122°51′00″, thence S. 89°59′ E. 2000 yards, thence to S. 00° 01′ W. 200 yards, thence N. 89°59′ W. approximately 2000 yards to the high water line 100 yards southerly of the control building.

(2) *The regulations.* (i) No vessel shall, at any time, anchor or tow a drag of any kind in this area.

(ii) The regulations in this paragraph shall be enforced by the Commandant, Thirteenth Naval District, or his authorized representative.

(p) *Port Townsend, Indian Island, Walan Point, Naval Restricted Area*—(1) *The area.* The waters of Port Townsend bounded by a line commencing on the north shore of Walan Point at latitude 48°04′41″N. longitude 122°44′26″W; thence to latitute 48°04′46″N, longitude 122°44′53″W; thence to latitute 48°04′19″N, longitude 122°45′05″W; thence to latitude 48°04′15″N, longitude 122°44′48″W thence to a point on the Walan Point shore line at latitude 48°04′18″N, longitude 122°44′48″; and thence along the shoreline to the point of beginning. This line is located approximately 200 yards from the face and ends of the pier.

(2) *This regulation.* No vessel shall enter this area without permission from the Commandant, Thirteenth Naval District, or his authorized representative. This restriction shall apply during periods when ship loading and/or pier operations preclude safe entry. These periods will be identified by flying a red flag from the ship and/or pier. A yellow flag will be displayed 24 hours in advance of the restricted periods.

[26 FR 11203, Nov. 28, 1961, as amended at 28 FR 4785, May 14, 1963; 32 FR 8717, June 17, 1967; 32 FR 13382, Sept. 22, 1967; 33 FR 3218, Feb. 21, 1968; 33 FR 8390, June 6, 1968; 36 FR 3047, Feb. 17, 1971; 36 FR 10730, June 2, 1971; 42 FR 40909, Aug. 12, 1977; 42 FR 60142, Nov. 25, 1977; 43 FR 14652, Apr. 7, 1978; 44 FR 37610, June 28, 1979; 45 FR 24460, Apr. 10, 1980; 45 FR 31062, May 12, 1980]

§ 207.770 Snoqualmie and Snohomish Rivers, Wash.; logging.

Loose logs may be floated in navigable parts of the Snoqualmie and Snohomish Rivers under the following conditions:

(a) All loggers and river drivers operating on the Snoqualmie and Snohomish Rivers shall be required to register at the United States Engineer Office, Seattle, Wash., giving the firm name, manager's name, and postoffice address.

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(b) No logs shall be dumped into the rivers or released from storage booms without being turned over to a registered driving company, firm, or individual.

(c) River drivers authorized to operate on these streams must maintain a sufficient organization of boats and experienced workmen to care for the drives of their customers.

(d) River drivers shall so conduct their operations that all parts of the river will be effectively patrolled and the formation of jams prevented.

(e) During times of freshet, river drivers shall increase their force and station men at critical points where jams are liable to form.

(f) Loggers who entrust their logs to river drivers will be required to satisfy themselves that their logs are being driven in accordance with this section, and if continued unconcern on their part results in confusion, the privilege of dumping logs into the stream shall be denied to them.

(g) Hemlock logs that will not float for their entire length shall not be deposited in the rivers.

[Regs. Apr. 27, 1910]

§ 207.780 Sammamish River, Wash.; logging.

Logs may be floated on Sammamish River between Lakes Sammamish and Washington under the following conditions:

(a) At least once every 6 months all loggers, log owners, and river drivers operating on the Sammamish River shall be required to register at the United States Engineer Office, Seattle, Wash., giving full name and post office address.

(b) Logs run from Lake Sammamish shall be in charge of a competent driving crew and kept continuously on the move while in transit.

(c) Loggers putting logs into Sammamish River shall inclose their logs in pocket booms along the bank of the river, and these pocket booms shall be so arranged that a free passageway of ruling depth, at least 12 feet wide, shall be left between the boom and opposite shore.

(d) When logs are released from pocket booms they shall be placed in charge of a competent driving crew and kept continuously on the move to Lake Washington or to the mills located on Sammamish River.

(e) Should a blockade of logs occur in the river at any time, each logger whose brand appears on any of the logs in said blockade shall discontinue dumping logs into the river until the blockade has been broken.

(f) Log drivers who indifferently operate, or who delay the transit of logs, will be denied the privilege of operating in such capacity on this stream.

(g) To make unnecessary the present practice of storing logs in the Sammamish River, no logs will be started down this stream until provision has been made for boom sticks at the mouth sufficient to hold the entire drive or other means of storage provided.

[Regs., Feb. 17, 1910]

§ 207.801 Lutak Inlet, Alaska; restricted areas.

(a) *The areas*—(1) *Army POL dock restricted area.* (i) The waters of Lutak Inlet bounded as follows: Beginning at the water's edge 900 feet northwest of the centerline of the landward end of the POL dock; thence 800 feet, 51° true; thence 1,400 feet, 113° true; thence 450 feet, 211° true to the water's edge at a point approximately 720 feet from the most southwest corner of the seaward end of the POL dock; thence along the water's edge to the point of beginning.

(ii) The area will be marked at points approximately 200 feet apart along the shore by white signs containing the word "Warning." The signs will not be lighted.

(2) *Dry Cargo dock mooring area.* (i) The waters within 60 feet off the face of the dock.

(b) *The regulations.* (1) No vessels or other craft shall enter or remain in the Army POL dock restricted area when tankers are engaged in discharging oil at the dock.

(2) The dropping and dragging of anchors, weights, or other ground tackle within the Dry Cargo dock mooring area is prohibited.

(3) The regulations in this section shall be enforced by the District Engineer, U.S. Army Engineer District, An-

chorage, Alaska, and such agencies as he may designate.

[33 FR 7723, May 25, 1968]

§ 207.802 Kuluk Bay, Adak, Alaska; naval restricted area.

(a) *The area.* The northwest portion of Kuluk Bay bounded as follows: Beginning at Zeto Point at latitude 51°54'36", longitude 176°33'08"; thence due south to latitude 51°52'00", longitude 176°33'08"; thence due west to the shore at latitude 51°52'00", longitude 176°37'35"; thence along the shore line to the point of beginning.

(b) *The regulations.* (1) Except in great emergency, no vessel shall anchor in the restricted area described in paragraph (a) of this section.

(2) Dragging of anchors in or across the restricted area is prohibited and no object attached to a vessel shall be placed on or near the bottom.

(3) The regulations in this section shall be enforced by the Commander, Patrol Wing, U.S. Pacific Fleet, NAS Moffett Field, California, and such agencies as he may designate.

[28 FR 4842, May 15, 1963, as amended at 42 FR 58519, Nov. 10, 1977]

§ 207.804 Bering Strait, Alaska; naval restricted area off Cape Prince of Wales.

(a) *The area.* An area 2,000 feet wide extending from a point on Cape Prince of Wales marked by a triangular cable marker located approximately midway between the village of Wales and Cape Prince of Wales Light to a point four statute miles due west of the cable marker with the axis of the area passing through the two points.

(b) *The regulations.* (1) No vessel shall anchor in the restricted area described in paragraph (a) of this section.

(2) Dragging of anchors in or across the restricted area is prohibited and no object attached to a vessel shall be placed on or near the bottom.

(3) The regulations in this section shall be enforced by the Commander, Third Fleet, Pearl Harbor, Hawaii and such agencies as he may designate.

[18 FR 8117, Dec. 10, 1953, as amended at 33 FR 5875, Apr. 17, 1968; 42 FR 58519, Nov. 10, 1977]

§ 207.805 [Reserved]

§ 207.806 Pacific Ocean, at Barbers Point, Island of Oahu, Hawaii; restricted area.

(a) *The area.* That portion of the Pacific Ocean lying offshore of Oahu between Ewa Beach and Barbers Point, basically outlined as follows:

Station	Latitude	Longitude
A (shoreline)	21°18'06"	158°04'24"
B	21°17'00"	158°03'30"
C	21°15'00"	158°03'18"
D	21°15'36"	158°01'06"
E (shoreline)	21°18'30"	158°02'00"

(b) *The regulations.* (1) Vessels shall not anchor within the area at any time.

(2) Dredging, dragging, seining, or other fishing operations which might foul underwater installations within the area are prohibited.

(3) Use of the restricted area for boating, fishing (except as prohibited in paragraph (b)(2) of this section) and other surface activities is authorized.

(4) The regulations in this section shall be enforced by the Commander, Fleet Training Group, Pearl Harbor, Hawaii 96860, and such agencies as he/she may designate.

(Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

[36 FR 14186, July 31, 1971, as amended at 45 FR 57126, Aug. 27, 1980]

§ 207.807 Pacific Ocean, at Makapuu Point, Waimanalo, Island of Oahu, Hawaii, Makai Undersea Test Range.

(a) *The restricted area.* The waters within an area beginning at a point in latitude 21°18'50" N., longitude 157°39'07" W.; thence to latitude 21°20'33" N., longitude 157°38'00" W.; thence to latitude 21°22'02" N., longitude 157°39'07" W.; and thence to latitude 21°19'35" N., longitude 157°40'46" W.

(b) *The regulations.* (1) During critical testing phases of surface and submerged units, the operating officials of the Makai Test Range will mark in a conspicuous manner the location of the equipment which might be subject to damage from navigation and fishing activities or might represent a hazard

to persons or property in the vicinity. During the display of signals in the restricted area, all surface craft will remain away from the area until such time as the signals are withdrawn. At all other times the area is open to unrestricted fishing, boating and general navigation.

(2) Operating officers and personnel of the Makai Test Range will be responsible for marking in a conspicuous manner the location of surface and underwater equipment which is subject to damage from navigation and fishing activities in the vicinity or represents a hazard to persons or property in the vicinity, and the location of the work area during critical testing phases. Surface communication by boat will be provided by the Makai Test Range during testing phases.

[34 FR 7964, May 21, 1969]

§ 207.808 Apra Inner Harbor, Island of Guam, restricted area.

(a) *The restricted area.* The waters within Apra Inner Harbor and adjacent waters of Apra Outer Harbor inclosed by a line beginning at the northeast corner of a pier at latitude 13°26'32.1" N., longitude 144°39'02.8" E.; thence to the northern tip of a small island at latitude 13°26'40.2" N., longitude 144°39'28.1" E., and thence to the northwest corner of the point of land at latitude 13°26'28.1" N., longitude 144°39'52.5" E.

(b) *The regulations.* (1) All swimmers and all vessels and craft except public vessels of the United States are prohibited from entering this area without prior permission of the enforcing agency.

(2) The regulations in this section shall be enforced by Commander Naval Forces Marianas and such agencies as he may designate.

(3) The water areas of the outer boundaries of the restricted area will not be marked but signs will be posted at the designated boundary coordinates to warn against trespassing in the restricted area.

[37 FR 8525, Apr. 28, 1972, as amended at 37 FR 11058, June 2, 1972]

§ 207.815 Vieques Passage and Atlantic Ocean, off east coast of Puerto Rico and coast of Vieques Island; naval restricted areas.

(a) *The restricted areas.* (1) A strip, 1,500 yards wide, off the naval reservation shoreline along the east coast of Puerto Rico extending from Point Figuera south to Point Puerca, and thence west to Point Cascajo and the mouth of the Daguada River.

(2) A strip, 1,500 yards wide, off the naval reservation shoreline along the west end of Vieques Island extending from Caballo Point on the north shore, west around the breakwater to Point Arenas, and thence south and east to a point on the shoreline one mile east of the site of the abandoned central at Playa Grande.

(3) A strip, 1,500 yards wide, off the south coast of Vieques Island extending from the entrance to Port Mosquito east to Conejo Point.

(4) An area inclosed by an arc with a radius of 3,000 yards centered on Cabras Island Lighthouse and extending from Point Puerca to Point Cascajo.

(b) *The regulations.* No vessel shall enter or remain within the restricted areas at any time unless on official business, except that fishing vessels are permitted to anchor in Playa Blanca, passing through the restricted area described in paragraph (a)(1) of this section to and from anchorage on as near a north-south course as sailing conditions permit. Under no conditions will fishing be permitted in the restricted areas.

[13 FR 9564, Dec. 31, 1948]

§ 207.817 Caribbean Sea, at St. Croix, V.I.; restricted areas.

(a) *The areas*—(1) *Area "A".* A triangular area bounded by the following coordinates:

Latitude	Longitude
17°44'42" N.	64°54'18" W.
17°43'06" N.	64°54'18" W.
17°44'30" N.	64°53'30" W.

(2) *Area "B".* A rectangular area bounded by the following coordinates:

Latitude	Longitude
17°41'42" N.	64°54'00" W.
17°41'42" N.	64°54'18" W.
17°41'18" N.	64°54'00" W.
17°41'18" N.	64°54'18" W.

(b) *The regulations.* (1) Anchoring in the restricted areas is prohibited with the exception of U.S. Government owned vessels and private vessels that have been specifically authorized to do so by the Commanding Officer, Atlantic Fleet Range Support Facility.

(2) The regulations in this paragraph shall be enforced by the Commanding Officer, Atlantic Fleet Range Support Facility, Roosevelt Roads, P.R., and such agencies as he may designate.

[34 FR 19030, Nov. 29, 1969]

PART 208—FLOOD CONTROL REGULATIONS

Sec.

208.10 Local flood protection works; maintenance and operation of structures and facilities.
208.11 Regulations for use of storage allocated for flood control or navigation and/or project operation at reservoirs subject to prescription of rules and regulations by the Secretary of the Army in the interest of flood control and navigation.
208.19 Marshall Ford Dam and Reservoir (Mansfield Dam and Lake Travis), Colorado River, Tex.
208.22 Twin Buttes Dam and Reservoir, Middle and South Concho Rivers, Tex.
208.25 Pensacola Dam and Reservoir, Grand (Neosho) River, Okla.
208.26 Altus Dam and Reservoir, North Fork Red River, Okla.
208.27 Fort Cobb Dam and Reservoir, Pond (Cobb) Creek, Oklahoma.
208.28 Foss Dam and Reservoir, Washita River, Oklahoma.
208.29 Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.
208.32 Sanford Dam and Lake Meredith, Canadian River, Tex.
208.33 Cheney Dam and Reservoir, North Fork of Ninnescah River, Kans.
208.34 Norman Dam and Lake Thunderbird, Little River, Okla.
208.82 Hetch Hetchy, Cherry Valley, and Don Pedro Dams and Reservoirs.

AUTHORITY: Sec. 7, 58 Stat. 890; 33 U.S.C. 709, unless otherwise noted.

§ 208.10 Local flood protection works; maintenance and operation of structures and facilities.

(a) *General.* (1) The structures and facilities constructed by the United States for local flood protection shall be continuously maintained in such a manner and operated at such times and for such periods as may be necessary to obtain the maximum benefits.

(2) The State, political subdivision thereof, or other responsible local agency, which furnished assurance that it will maintain and operate flood control works in accordance with regulations prescribed by the Secretary of the Army, as required by law, shall appoint a permanent committee consisting of or headed by an official hereinafter called the "Superintendent," who shall be responsible for the development and maintenance of, and directly in charge of, an organization responsible for the efficient operation and maintenance of all of the structures and facilities during flood periods and for continuous inspection and maintenance of the project works during periods of low water, all without cost to the United States.

(3) A reserve supply of materials needed during a flood emergency shall be kept on hand at all times.

(4) No encroachment or trespass which will adversely affect the efficient operation or maintenance of the project works shall be permitted upon the rights-of-way for the protective facilities.

(5) No improvement shall be passed over, under, or through the walls, levees, improved channels or floodways, nor shall any excavation or construction be permitted within the limits of the project right-of-way, nor shall any change be made in any feature of the works without prior determination by the District Engineer of the Department of the Army or his authorized representative that such improvement, excavation, construction, or alteration will not adversely affect the functioning of the protective facilities. Such improvements or alterations as may be found to be desirable and permissible under the above determination shall be constructed in accordance with standard

engineering practice. Advice regarding the effect of proposed improvements or alterations on the functioning of the project and information concerning methods of construction acceptable under standard engineering practice shall be obtained from the District Engineer or, if otherwise obtained, shall be submitted for his approval. Drawings or prints showing such improvements or alterations as finally constructed shall be furnished the District Engineer after completion of the work.

(6) It shall be the duty of the superintendent to submit a semiannual report to the District Engineer covering inspection, maintenance, and operation of the protective works.

(7) The District Engineer or his authorized representatives shall have access at all times to all portions of the protective works.

(8) Maintenance measures or repairs which the District Engineer deems necessary shall be promptly taken or made.

(9) Appropriate measures shall be taken by local authorities to insure that the activities of all local organizations operating public or private facilities connected with the protective works are coordinated with those of the Superintendent's organization during flood periods.

(10) The Department of the Army will furnish local interests with an Operation and Maintenance Manual for each completed project, or separate useful part thereof, to assist them in carrying out their obligations under this part.

(b) *Levees*—(1) *Maintenance.* The Superintendent shall provide at all times such maintenance as may be required to insure serviceability of the structures in time of flood. Measures shall be taken to promote the growth of sod, exterminate burrowing animals, and to provide for routine mowing of the grass and weeds, removal of wild growth and drift deposits, and repair of damage caused by erosion or other forces. Where practicable, measures shall be taken to retard bank erosion by planting of willows or other suitable growth on areas riverward of the levees. Periodic inspections shall be made by the Superintendent to insure that the above maintenance measures are being effectively carried out and, further, to be certain that:

(i) No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place;

(ii) No caving has occurred on either the land side or the river side of the levee which might affect the stability of the levee section;

(iii) No seepage, saturated areas, or sand boils are occurring;

(iv) Toe drainage systems and pressure relief wells are in good working condition, and that such facilities are not becoming clogged;

(v) Drains through the levees and gates on said drains are in good working condition;

(vi) No revetment work or riprap has been displaced, washed out, or removed;

(vii) No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod;

(viii) Access roads to and on the levee are being properly maintained;

(ix) Cattle guards and gates are in good condition;

(x) Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained;

(xi) There is no unauthorized grazing or vehicular traffic on the levees;

(xii) Encroachments are not being made on the levee right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.

Such inspections shall be made immediately prior to the beginning of the flood season; immediately following each major high water period, and otherwise at intervals not exceeding 90 days, and such intermediate times as may be necessary to insure the best possible care of the levee. Immediate steps will be taken to correct dangerous conditions disclosed by such inspections. Regular maintenance repair measures shall be accomplished during the appropriate season as scheduled by the Superintendent.

(2) *Operation.* During flood periods the levee shall be patrolled continuously to locate possible sand boils or

unusual wetness of the landward slope and to be certain that:

(i) There are no indications of slides or sloughs developing;

(ii) Wave wash or scouring action is not occurring;

(iii) No low reaches of leave exist which may be overtopped;

(iv) No other conditions exist which might endanger the structure.

Appropriate advance measures will be taken to insure the availability of adequate labor and materials to meet all contingencies. Immediate steps will be taken to control any condition which endangers the levee and to repair the damaged section.

(c) *Flood walls*—(1) *Maintenance.* Periodic inspections shall be made by the Superintendent to be certain that:

(i) No seepage, saturated areas, or sand boils are occurring;

(ii) No undue settlement has occurred which affects the stability of the wall or its water tightness;

(iii) No trees exist, the roots of which might extend under the wall and offer accelerated seepage paths;

(iv) The concrete has not undergone cracking, chipping, or breaking to an extent which might affect the stability of the wall or its water tightness;

(v) There are no encroachments upon the right-of-way which might endanger the structure or hinder its functioning in time of flood;

(vi) Care is being exercised to prevent accumulation of trash and debris adjacent to walls, and to insure that no fires are being built near them;

(vii) No bank caving conditions exist riverward of the wall which might endanger its stability;

(viii) Toe drainage systems and pressure relief wells are in good working condition, and that such facilities are not becoming clogged.

Such inspections shall be made immediately prior to the beginning of the flood season, immediately following each major high water period, and otherwise at intervals not exceeding 90 days. Measures to eliminate encroachments and effect repairs found necessary by such inspections shall be undertaken immediately. All repairs shall be accomplished by methods acceptable in standard engineering practice.

(2) *Operation.* Continuous patrol of the wall shall be maintained during flood periods to locate possible leakage at monolith joints or seepage underneath the wall. Floating plant or boats will not be allowed to lie against or tie up to the wall. Should it become necessary during a flood emergency to pass anchor cables over the wall, adequate measures shall be taken to protect the concrete and construction joints. Immediate steps shall be taken to correct any condition which endangers the stability of the wall.

(d) *Drainage structures*—(1) *Maintenance.* Adequate measures shall be taken to insure that inlet and outlet channels are kept open and that trash, drift, or debris is not allowed to accumulate near drainage structures. Flap gates and manually operated gates and valves on drainage structures shall be examined, oiled, and trial operated at least once every 90 days. Where drainage structures are provided with stop log or other emergency closures, the condition of the equipment and its housing shall be inspected regularly and a trial installation of the emergency closure shall be made at least once each year. Periodic inspections shall be made by the Superintendent to be certain that:

(i) Pipes, gates, operating mechanism, riprap, and headwalls are in good condition;

(ii) Inlet and outlet channels are open;

(iii) Care is being exercised to prevent the accumulation of trash and debris near the structures and that no fires are being built near bituminous coated pipes;

(iv) Erosion is not occurring adjacent to the structure which might endanger its water tightness or stability.

Immediate steps will be taken to repair damage, replace missing or broken parts, or remedy adverse conditions disclosed by such inspections.

(2) *Operation.* Whenever high water conditions impend, all gates will be inspected a short time before water reaches the invert of the pipe and any object which might prevent closure of the gate shall be removed. Automatic

gates shall be closely observed until it has been ascertained that they are securely closed. Manually operated gates and valves shall be closed as necessary to prevent inflow of flood water. All drainage structures in levees shall be inspected frequently during floods to ascertain whether seepage is taking place along the lines of their contact with the embankment. Immediate steps shall be taken to correct any adverse condition.

(e) *Closure structures*—(1) *Maintenance.* Closure structures for traffic openings shall be inspected by the Superintendent every 90 days to be certain that:

(i) No parts are missing;

(ii) Metal parts are adequately covered with paint;

(iii) All movable parts are in satisfactory working order;

(iv) Proper closure can be made promptly when necessary;

(v) Sufficient materials are on hand for the erection of sand bag closures and that the location of such materials will be readily accessible in times of emergency.

Tools and parts shall not be removed for other use. Trial erections of one or more closure structures shall be made once each year, alternating the structures chosen so that each gate will be erected at least once in each 3-year period. Trial erection of all closure structures shall be made whenever a change is made in key operating personnel. Where railroad operation makes trial erection of a closure structure infeasible, rigorous inspection and drill of operating personnel may be substituted therefor. Trial erection of sand bag closures is not required. Closure materials will be carefully checked prior to and following flood periods, and damaged or missing parts shall be repaired or replaced immediately.

(2) *Operation.* Erection of each movable closure shall be started in sufficient time to permit completion before flood waters reach the top of the structure sill. Information regarding the proper method of erecting each individual closure structure, together with an estimate of the time required by an experienced crew to complete its erection will be given in the Operation and Maintenance Manual which will be furnished local interests upon completion of the project. Closure structures will be inspected frequently during flood periods to ascertain that no undue leakage is occurring and that drains provided to care for ordinary leakage are functioning properly. Boats or floating plant shall not be allowed to tie up to closure structures or to discharge passengers or cargo over them.

(f) *Pumping plants*—(1) *Maintenance.* Pumping plants shall be inspected by the Superintendent at intervals not to exceed 30 days during flood seasons and 90 days during off-flood seasons to insure that all equipment is in order for instant use. At regular intervals, proper measures shall be taken to provide for cleaning plant, buildings, and equipment, repainting as necessary, and lubricating all machinery. Adequate supplies of lubricants for all types of machines, fuel for gasoline or diesel powered equipment, and flash lights or lanterns for emergency lighting shall be kept on hand at all times. Telephone service shall be maintained at pumping plants. All equipment, including switch gear, transformers, motors, pumps, valves, and gates shall be trial operated and checked at least once every 90 days. Megger tests of all insulation shall be made whenever wiring has been subjected to undue dampness and otherwise at intervals not to exceed one year. A record shall be kept showing the results of such tests. Wiring disclosed to be in an unsatisfactory condition by such tests shall be brought to a satisfactory condition or shall be promptly replaced. Diesel and gasoline engines shall be started at such intervals and allowed to run for such length of time as may be necessary to insure their serviceability in times of emergency. Only skilled electricians and mechanics shall be employed on tests and repairs. Operating personnel for the plant shall be present during tests. Any equipment removed from the station for repair or replacement shall be returned or replaced as soon as practicable and shall be trial operated after reinstallation. Repairs requiring removal of equipment from the plant shall be made

during off-flood seasons insofar as practicable.

(2) *Operation.* Competent operators shall be on duty at pumping plants whenever it appears that necessity for pump operation is imminent. The operator shall thoroughly inspect, trial operate, and place in readiness all plant equipment. The operator shall be familiar with the equipment manufacturers' instructions and drawings and with the "Operating Instructions" for each station. The equipment shall be operated in accordance with the above-mentioned "Operating Instructions" and care shall be exercised that proper lubrication is being supplied all equipment, and that no overheating, undue vibration or noise is occurring. Immediately upon final recession of flood waters, the pumping station shall be thoroughly cleaned, pump house sumps flushed, and equipment thoroughly inspected, oiled and greased. A record or log of pumping plant operation shall be kept for each station, a copy of which shall be furnished the District Engineer following each flood.

(g) *Channels and floodways*—(1) *Maintenance.* Periodic inspections of improved channels and floodways shall be made by the Superintendent to be certain that:

(i) The channel or floodway is clear of debris, weeds, and wild growth;

(ii) The channel or floodway is not being restricted by the depositing of waste materials, building of unauthorized structures or other encroachments;

(iii) The capacity of the channel or floodway is not being reduced by the formation of shoals;

(iv) Banks are not being damaged by rain or wave wash, and that no sloughing of banks has occurred;

(v) Riprap sections and deflection dikes and walls are in good condition;

(vi) Approach and egress channels adjacent to the improved channel or floodway are sufficiently clear of obstructions and debris to permit proper functioning of the project works.

Such inspections shall be made prior to the beginning of the flood season and otherwise at intervals not to exceed 90 days. Immediate steps will be taken to remedy any adverse conditions disclosed by such inspections. Measures will be taken by the Superintendent to promote the growth of grass on bank slopes and earth deflection dikes. The Superintendent shall provide for periodic repair and cleaning of debris basins, check dams, and related structures as may be necessary.

(2) *Operation.* Both banks of the channel shall be patrolled during periods of high water, and measures shall be taken to protect those reaches being attacked by the current or by wave wash. Appropriate measures shall be taken to prevent the formation of jams of ice or debris. Large objects which become lodged against the bank shall be removed. The improved channel or floodway shall be thoroughly inspected immediately following each major high water period. As soon as practicable thereafter, all snags and other debris shall be removed and all damage to banks, riprap, deflection dikes and walls, drainage outlets, or other flood control structures repaired.

(h) *Miscellaneous facilities*—(1) *Maintenance.* Miscellaneous structures and facilities constructed as a part of the protective works and other structures and facilities which function as a part of, or affect the efficient functioning of the protective works, shall be periodically inspected by the Superintendent and appropriate maintenance measures taken. Damaged or unserviceable parts shall be repaired or replaced without delay. Areas used for ponding in connection with pumping plants or for temporary storage of interior run-off during flood periods shall not be allowed to become filled with silt, debris, or dumped material. The Superintendent shall take proper steps to prevent restriction of bridge openings and, where practicable, shall provide for temporary raising during floods of bridges which restrict channel capacities during high flows.

(2) *Operation.* Miscellaneous facilities shall be operated to prevent or reduce flooding during periods of high water. Those facilities constructed as a part of the protective works shall not be used for purposes other than flood protection without approval of the

District Engineer unless designed therefor.

(Sec. 3, 49 Stat. 1571, as amended; 33 U.S.C. 701c)

[9 FR 9999, Aug. 17, 1944; 9 FR 10203, Aug. 22, 1944]

§ 208.11 Regulations for use of storage allocated for flood control or navigation and/or project operation at reservoirs subject to prescription of rules and regulations by the Secretary of the Army in the interest of flood control and navigation.

(a) *Purpose.* This regulation prescribes the responsibilities and general procedures for regulating reservoir projects capable of regulation for flood control or navigation and the use of storage allocated for such purposes and provided on the basis of flood control and navigation, except projects owned and operated by the Corps of Engineers; the International Boundary and Water Commission, United States and Mexico; and those under the jurisdiction of the International Joint Commission, United States, and Canada, and the Columbia River Treaty. The intent of this regulation is to establish an understanding between project owners, operating agencies, and the Corps of Engineers.

(b) *Responsibilities.* The basic responsibilities of the Corps of Engineers regarding project operation are set out in the cited authority and described in the following paragraphs:

(1) Section 7 of the Flood Control Act of 1944 (58 Stat. 890, 33 U.S.C. 709) directs the Secretary of the Army to prescribe regulations for flood control and navigation in the following manner:

> Hereafter, it shall be the duty of the Secretary of War to prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, and the operation of any such project shall be in accordance with such regulations: *Provided*, That this section shall not apply to the Tennessee Valley Authority, except that in case of danger from floods on the lower Ohio and Mississippi Rivers the Tennessee Valley Authority is directed to regulate the release of water from the Tennessee River into the Ohio River in accordance with such instructions as may be issued by the War Department.

(2) Federal Energy Regulatory Commission (formerly Federal Power Commission (FPC)) licenses.

(i) Responsibilities of the Secretary of the Army and/or the Chief of Engineers in Federal Energy Regulatory Commission (FERC) licensing actions are set out in the Federal Power Act. Pertinent sections of that Act are cited herein. The Commission may also stipulate, as part of license conditions, that the licensee enter into an agreement with the Department of the Army providing for operation of the project during flood times, in accordance with rules and regulations prescribed by the Secretary of the Army.

(A) Section 4(e) of the Federal Power Act requires approval by the Chief of Engineers and the Secretary of the Army of plans of dams or other structures affecting the navigable capacity of any navigable waters of the United States, prior to issuance of a license by the Commission as follows:

> The Commission is hereby authorized and empowered to issue licenses to citizens * * * for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction * * * *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army.

(B) Sections 10(a) and 10(c) of the Federal Power Act specify conditions of project licenses including the following:

> (1) Section 10(a). That the project adopted * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use of benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public use * * *.

(2) Section 10(c). That the licensee shall * * * so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property.* * *

(C) Section 18 of the Federal Power Act directs the operation of any navigation facilities built under the provision of that act, be controlled by rules and regulations prescribed by the Secretary of the Army as follows:

The operation of any navigation facilities which may be constructed as part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation; including the control of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army, * * *

(ii) Federal Power Commission order No. 540 issued October 31, 1975, and published November 7,1975 (40 FR 51998), amending section 2.9 of the Commission's general policy and interpretations prescribed standardized conditions (forms) for inclusion in preliminary permits and licenses issued under Part I of the Federal Power Act. As an example, Article 12 of Standard Form L-3, titled: "Terms and Conditions of License for Constructed Major Projects Affecting Navigable Waters of the United States," sets out the Commission's interpretation of appropriate sections of the Act, which deal with navigation aspects, and attendant responsibilities of the Secretary of the Army in licensing actions as follows:

The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operation of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, * * *, and the Licensee shall release water from the project reservoir at such rate * * *, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

(3) Section 9 of Pub. L. 436, 83d Congress (68 Stat. 303) provides for the development of the Coosa River, Ala. and Ga., and directs the Secretary of the Army to prescribe rules and regulations for project operation in the interest of flood control and navigation as follows:

The operation and maintenance of the dams shall be subject to reasonable rules and regulations of the Secretary of the Army in the interest of flood control and navigation.

NOTE: This Regulation will also be applicable to dam and reservoir projects operated under provisions of future legislative acts wherein the Secretary of the Army is directed to prescribe rules and regulations in the interest of flood control and navigation. The Chief of Engineers, U.S. Army Corps of Engineers, is designated the duly authorized representative of the Secretary of the Army to exercise the authority set out in the congressional acts. This regulation will normally be implemented by letters of understanding between the Corps of Engineers and project owner and will incorporate the provisions of such letters of understanding prior to the time construction renders the project capable of significant impoundment of water. A water control agreement signed by both parties will follow when deliberate impoundment first begins or at such time as the responsibilities of any corps-owned projects may be transferred to another entity. Promulgation of this regulation for a given project will occur at such time as the name of the project appears in the FEDERAL REGISTER in accordance with the requirements of § 208.11(d)(11). When agreement on a water control plan cannot be reached between the corps and the project owner after coordination with all interested parties, the project name will be entered in the FEDERAL REGISTER and the Corps of Engineers plan will be the officials water control plan until such time as differences can be resolved.

(c) *Scope and terminology.* This regulation applies to Federal authorized flood control and/or navigation storage projects, and to non-Federal projects which require the Secretary of the Army to prescribe regulations as a condition of the license, permit or legislation, during the planning, design and construction phases, and throughout the life of the project. In compliance with the authority cited above, this regulation defines certain activi-

ties and responsibilities concerning water control management throughout the Nation in the interest of flood control and navigation. In carrying out the conditions of this regulation, the owner and/or operating agency will comply with applicable provisions of Pub. L. 85-624, the Fish and Wildlife Coordination Act of 1958, and Pub. L. 92-500, the Federal Water Pollution Control Act Amendments of 1972. This regulation does not apply to local flood protection works governed by § 208.10, or to navigation facilities and associated structures which are otherwise covered by Part 207 (Navigation Regulations) of Title 33 of the code. Small reservoirs, containing less than 12,500 acre-feet of flood control or navigation storage, may be excluded from this regulation and covered under § 208.10, unless specifically required by law or conditions of the license or permit.

(1) The terms "reservoir" and "project" as used herein include all water resource impoundment projects constructed or modified, including natural lakes, that are subject to this regulation.

(2) The term "project owner" refers to the entity responsible for maintenance, physical operation, and safety of the project, and for carrying out the water control plan in the interest of flood control and/or navigation as prescribed by the Corps of Engineers. Special arrangements may be made by the project owner or "operating agencies" to perform these tasks.

(3) The term "letter of understanding" as used herein includes statements which consummate this regulation for any given project and define the general provisions or conditions of the local sponsor, or owner, cooperation agreed to in the authorizing legislative document, and the requirements for compliance with section 7 of the 1944 Flood Control Act, the Federal Power Act or other special congressional act. This information will be specified in the water control plan and manual. The letter of understanding will be signed by a duly authorized representative of the Chief of Engineers and the project owner. A "field working agreement" may be substituted for a letter of understanding, provided that the specified minimum requirements of the latter, as stated above, are met.

(4) The term "water control agreement" refers to a compliation of water control criteria, guidelines, diagrams, release schedules, rule curves and specifications that basically govern the use of reservoir storage space allocated for flood control or navigation and/or release functions of a water control project for these purposes. In general, they indicate controlling or limiting rates of discharge and storage space required for flood control and/or navigation, based on the runoff potential during various seasons of the year.

(5) For the purpose of this regulation, the term "water control plan" is limited to the plan of regulation for a water resources project in the interest of flood control and/or navigation. The water control plan must conform with proposed allocations of storage capacity and downstream conditions or other requirements to meet all functional objectives of the particular project, acting separately or in combination with other projects in a system.

(6) The term "real-time" denotes the processing of current information or data in a sufficiently timely manner to influence a physicial response in the system being monitored and controlled. As used herein the term connotes * * * the analyses for and execution of water control decisions for both minor and major flood events and for navigation, based on prevailing hydrometeorological and other conditions and constraints, to achieve efficient management of water resource systems.

(d) *Procedures*—(1) *Conditions during project formulation.* During the planning and design phases, the project owner should consult with the Corps of Engineers regarding the quantity and value of space to reserve in the reservoir for flood control and/or navigation purposes, and for utilization of the space, and other requirements of the license, permit or conditions of the law. Relevant matters that bear upon flood control and navigation accomplishment include: Runoff potential, reservoir discharge capability, downstream channel char-

acteristics, hydrometeorological data collection, flood hazard, flood damage charateristics, real estate acquisition for flowage requirements (fee and easement), and resources required to carry out the water control plan. Advice may also be sought on determination of and regulation for the probable maximum or other design flood under consideration by the project owner to establish the quantity of surcharge storage space, and freeboard elevation of top of dam or embankment for safety of the project.

(2) *Corps of Engineers involvement.* If the project owner is responsible for real-time implemenetation of the water control plan, consultation and assistance will be provided by the Corps of Engineers when appropriate and to the extent possible. During any emergency that affects flood control and/or navigation, the Corps of Engineers may temporarily prescribe regulation of flood control or navigation storage space on a day-to-day (real-time) basis without request of the project owner. Appropriate consideration will be given for other authorized project functions. Upon refusal of the project owner to comply with regulations prescribed by the Corps of Engineers, a letter will be sent to the project owner by the Chief of Engineers or his duly authorized representative describing the reason for the regulations prescribed, events that have transpired, and notification that the project owner is in violation of the Code of Federal Regulations. Should an impasse arise, in that the project owner or the designated operating entity persists in noncompliance with regulations prescribed by the Corps of Engineers, measures may be taken to assure compliance.

(3) *Corps of Engineers implementation of real-time water control decisions.* The Corps of Engineers may prescribe the continuing regulation of flood control storage space for any project subject to this regulation on a day-to-day (real-time) basis. When this is the case, consultation and assistance from the project owner to the extent possible will be expected. Special requests by the project owner, or appropriate operating entity, are preferred before the Corps of Engineers offers advice on real-time regulation during surcharge storage utilization.

(4) *Water control plan and manual.* Prior to project completion, water control managers from the Corps of Engineers will visit the project and the area served by the project to become familiar with the water control facilities, and to insure sound formulation of the water control plan. The formal plan of regulation for flood control and/or navigation, referred to herein as the water control plan, will be developed and documented in a water control manual prepared by the Corps of Engineers. Development of the manual will be coordinated with the project owner to obtain the necessary pertinent information, and to insure compatibility with other project purposes and with surcharge regulation. Major topics in the manual will include: Authorization and description of the project, hydrometeorology, data collection and communication networks, hydrologic forecasting, the water control plan, and water resource management functions, including responsibilities and coordination for water control decisionmaking. Special instructions to the dam tender or reservoir manager on data collection, reporting to higher Federal authority, and on procedures to be followed in the event of a communication outage under emergency conditions, will be prepared as an exhibit in the manual. Other exhibits will include copies of this regulation, letters of understanding consummating this regulation, and the water control agreements. After approval by the Chief of Engineers or his duly authorized representative, the manual will be furnished the project owner.

(5) *Water control agreement.* (i) A water control diagram (graphical) will be prepared by the Corps of Engineers for each project having variable space reservation for flood control and/or navigation during the year; e.g., variable seasonal storage, joint-use space, or other rule curve designation. Reservoir inflow parameters will be included on the diagrams when appropriate. Concise notes will be included on the diagrams prescribing the use of storage space in terms of release schedules, runoff, nondamaging or other

controlling flow rates downstream of the damsite, and other major factors as appropriate. A water control release schedule will be prepared in tabular form for projects that do not have variable space reservation for flood control and/or navigation. The water control diagram or release schedule will be signed by a duly authorized representative of the Chief of Engineers, the project owner, and the designated operating agency, and will be used as the basis for carrying out this regulation. Each diagram or schedule will contain a reference to this regulation.

(ii) When deemed necessary by the Corps of Engineers, information given on the water control diagram or release schedule will be supplemented by appropriate text to assure mutual understanding on certain details or other important aspects of the water control plan not covered in this regulation, on the water control diagram or in the release schedule. This material will include clarification of any aspects that might otherwise result in unsatisfactory project performance in the interest of flood contol and/or navigation. Supplementation of the agreement will be necessary for each project where the Corps of Engineers exercises the discretionary authority to prescribe the flood control regulation on a day-to-day (real-time) basis. The agreement will include delegation of the responsibility. The document should also cite, as appropriate, section 7 of the 1944 Flood Control Act, the Federal Power Act and/or other congressional legislation authorizing construction an/or directing operation of the project.

(iii) All flood control regulations published in the FEDERAL REGISTER under this section (Part 208) of the code prior to the date of this publication which are listed in §208.11(e) are hereby superseded.

(iv) Nothing in this regulation prohibits the promulgation of specific regulations for a project in compliance with the authorizing acts, when agreement on acceptable regulations cannot be reached between the Corps of Engineers and the owner.

(6) *Hydrometeorological instrumentation.* The project owner will provide instrumentation in the vicinity of the damsite and will provide communication equipment necessary to record and transmit hydrometeorological and reservoir data to all appropriate Federal authorities on a real-time basis unless there are extenuating circumstances or are otherwise provided for as a condition of the license or permit. For those projects where the owner retains responsibility for real-time implementation of the water control plan, the owner will also provide or arrange for the measurement and reporting of hydrometeorological parameters required within and adjacent to the watershed and downstream of the damsite, sufficient to regulate the project for flood control and/or navigation in an efficient manner. When data collection stations outside the immediate vicinity of the damsite are required, and funds for installation, observation, and maintenance are not available from other sources, the Corps of Engineers may agree to share the costs for such stations with the project owner. Availability of funds and urgency of data needs are factors which will be considered in reaching decisions on cost sharing.

(7) *Project safety.* The project owner is responsible for the safety of the dam and appurtenant facilities and for regulation of the project during surcharge storage utilization. Emphasis upon the safety of the dam is especially important in the event surcharge storage is utilized, which results when the total storage space reserved for flood control is exceeded. Any assistance provided by the Corps of Engineers concerning surcharge regulation is to be utilized at the discretion of the project owner, and does not relieve the owner of the responsibility for safety of the project.

(8) *Notification of the general public.* The Corps of Engineers and other interested Federal and State agencies, and the project owner will jointly sponsor public involvement activities, as appropriate, to fully apprise the general public of the water control plan. Public meetings or other effective means of notification and involvement will be held, with the initial meeting being conducted as early as practicable but not later than the time

the project first becomes operational. Notice of the initial public meeting shall be published once a week for 3 consecutive weeks in one or more newspapers of general circulation published in each county covered by the water control plan. Such notice shall also be used when appropriate to inform the public of modifications in the water control plan. If no newspaper is published in a county, the notice shall be published in one or more newspapers of general circulation within that county. For the purposes of this section a newspaper is one qualified to publish public notices under applicable State law. Notice shall be given in the event significant problems are anticipated or experienced that will prevent carrying out the approved water control plan or in the event that an extreme water condition is expected that could produce severe damage to property or loss of life. The means for conveying this information shall be commensurate with the urgency of the situation. The water control manual will be made available for examination by the general public upon request at the appropriate office of the Corps of Engineers, project owner or designated operating agency.

(9) *Other generalized requirements for flood control and navigation.* (i) Storage space in the reservoirs allocated for flood control and navigation purposes shall be kept available for those purposes in accordance with the water control agreement, and the plan of regulation in the water control manual.

(ii) Any water impounded in the flood control space defined by the water control agreement shall be evacuated as rapidly as can be safely accomplished without causing downstream flows to exceed the controlling rates; i.e., releases from reservoirs shall be restricted insofar as practicable to quantities which, in conjunction with uncontrolled runoff downstream of the dam, will not cause water levels to exceed the controlling stages currently in force. Although conflicts may arise with other purposes, such as hydropower, the plan or regulation may require releases to be completely curtailed in the interest of flood control or safety of the project.

(iii) Nothing in the plan of regulation for flood control shall be construed to require or allow dangerously rapid changes in magnitudes of releases. Releases will be made in a manner consistent with requirements for protecting the dam and reservoir from major damage during passage of the maximum design flood for the project.

(iv) The project owner shall monitor current reservoir and hydro- meteorological conditions in and adjacent to the watershed and downstream of the damsite, as necessary. This and any other pertinent information shall be reported to the Corps of Engineers on a timely basis, in accordance with standing instructions to the damtender or other means requested by the Corps of Engineers.

(v) In all cases where the project owner retains responsibility for real-time implementation of the water control plan, he shall make current determinations of: Reservoir inflow, flood control storage utilized, and scheduled releases. He shall also determine storage space and releases required to comply with the water control plan prescribed by the Corps of Engineers. The owner shall report this information on a timely basis as requested by the Corps of Engineers.

(vi) The water control plan is subject to temporary modification by the Corps of Engineers if found necessary in time of emergency. Requests for and action on such modifications may be made by the fastest means of communication available. The action taken shall be confirmed in writing the same day to the project owner and shall include justification for the action.

(vii) The project owner may temporarily deviate from the water control plan in the event an immediate short-term departure is deemed necessary for emergency reasons to protect the safety of the dam, or to avoid other serious hazards. Such actions shall be immediately reported by the fastest means of communication available. Actions shall be confirmed in writing the same day to the Corps of Engineers and shall include justification for the

action. Continuation of the deviation will require the express approval of the Chief of Engineers, or his duly authorized representative.

(viii) Advance approval of the Chief of Engineers, or his duly authorized representative, is required prior to any deviation from the plan of regulation prescribed or approved by the Corps of Engineers in the interest of flood control and/or navigation, except in emergency situations provided for in paragraph (d)(9)(vii) of this section. When conditions appear to warrant a prolonged deviation from the approved plan, the project owner and the Corps of Engineers will jointly investigate and evaluate the proposed deviation to insure that the overall integrity of the plan would not be unduly compromised. Approval of prolonged deviations will not be granted unless such investigations and evaluations have been conducted to the extent deemed necessary by the Chief of Engineers, or his designated representatives, to fully substantiate the deviation.

(10) *Revisions.* The water control plan and all associated documents will be revised by the Corps of Engineers, as necessary, to reflect changed conditions that come to bear upon flood control and navigation, e.g., reallocation of reservoir storage space due to sedimentation or transfer of storage space to a neighboring project. Revision of the water control plan, water control agreement, water control diagram, or release schedule requires approval of the Chief of Engineers or his duly authorized representative. Each such revision shall be effective upon the date specified in the approval. The original (signed document) water control agreement shall be kept on file in the Office, Chief of Engineers, Department of the Army, Washington, D.C. Copies of the agreement shall be kept on file and may be obtained from the office of the project owner, or from the office of the appropriate Division Engineer, Corps of Engineers.

(11) *Federal Register.* The following information for each project subject to section 7 of the 1944 Flood Control Act and other applicable congressional acts shall be published in the FEDERAL REGISTER prior to the time the projects becomes operational and prior to any significant impoundment before project completion or * * * at such time as the responsibility for physical operation and maintenance of the Corps of Engineers owned projects is transferred to another entity: (i) Reservoir, dam, and lake names, (ii) stream, county, and State corresponding to the damsite location, (iii) the maximum current storage space in acre-feet to be reserved exclusively for flood control and/or navigation purposes, or any multiple-use space (intermingled) when flood control or navigation is one of the purposes, with corresponding elevations in feet above mean sea level, and area in acres, at the upper and lower limits of said space, (iv) the name of the project owner, and (v) congressional legislation authorizing the project for Federal participation.

(e) *List of projects.* The following tables, "Pertinent Project Data—Section 208.11 Regulation," show the pertinent data for projects which are subject to this regulation.

LIST OF PROJECTS

[Pertinent project data]

Project name [1]	State, county and stream [1]	Exclusive-use					Multiple-use					Project owner [2]	Authorizing legislation [3]
		Flood control/navigation					Flood control/navigation						
		Storage (1,000 AF)	Elevation limits (feet, m.s.l.)		Area (acres)		Storage (1,000 AF)	Elevation limits (feet, m.s.l.)		Area (acres)			
			Upper	Lower	Upper	Lower		Upper	Lower	Upper	Lower		
Alpine Dam	IL, Winnebago, Keith Cr	0.6	796.0	764.0	52	0						City of Rockford, IL.	PWA Proj.
Agency Valley Dam & Res.	OR, Malheur, N. Fork Malheur R.						60.0	3,340.0	3,263.2	1,900	0	USBR	PL 68-292.
American Fall Dam & Res.	ID, Power, Snake River						1,700.0	4,343.2	4,295.6	56,100	0	USBR	FERC 2259.
Anderson Ranch Dam & Res.	ID, Elmore, S. Fk. Boise River						423.2	4,196.0	4,043.0	4,740	1,150	USBR	Act of 1939 53 Stat 1187.
Arrowrock Dam & Res.	ID, Elmore, Boise River						286.6	3,216.0	2,967.0	3,100	200	USBR	Act of 1902 32 Stat 388.
Bear Cr Dam	MO, Marion Ralls, Bear Cr	8.7	546.5	520.0	540	0						City of Hannibal, MO.	PL 83-780.
Bear Swamp Pumped Storage.	MA, Franklin, Deerfield R Trib											New England Pwr Co.	Fed Pwr Act.
Big Dry Creek and Div.	CA, Fresno, Big Dry Cr & Dog Cr.	16.2	425.0	393.0	1,530	0						Reclamation Board of CA.	PL 77-228.
Bocu Dam & Res	CA, Nevada, Little Truckee R					41	5,605.0	5,596.4	980	873		USBR	PL 61-289, PL 68-292.
Bonny Dam & Res	CO, Yuma, S. Fork Republican R.	128.8	3,710.0	3,672.0	5,036	2,042						USBR	PL 78-534.
Boysen Dam & Res	WY, Fremont, Wild River	146.0	4,732.0	4,725.0	22,100	19,560	146.1	4,725.0	4,717.0	19,560	16,955	USBR	PL 78-534.
Brownlee Dam & Res	OR, Baker, ID, Washington, Snake River.						980.3	2,077.0	1,976.0	13,840	6,650	Idaho Pwr Co	FERC No 1971-C.
Bully Cr Dam & Res	OR, Malheur, Bully Creek						31.6	2,523.0	2,456.8	1,082	140	USBR	PL 86-248.
Camanche Dam & Res.	CA, San Joaquin, Mokelumne R.						200.0	235.5	205.1	7,600	5,507	East Bay Mun Util Dist.	PL 86-645.
Canyon Ferry Dam & Lk.	MT, Lewis, Clark, Missouri R						799.1	3,797.0	3,770.0	34,435	24,126	USBR	PL 78-534.
Cedar Bluff Dam & Res.	KS, Trego, Smoky Hill River	191.9	2,166.0	2,144.0	10,790	6,869						USBR	PL 78-534.
Clark Canyon Dam & Res.	MT, Beaverhead, Beaverhead River.	79.1	5,560.4	5,546.1	5,903	5,160	50.4	5,546.1	5,535.7	5,160	4,496	USBR	PL 78-534.
Del Valle Dam & Res	CA, Alameda, Alameda Cr	37.0	745.0	703.1	1,060	710	1.0	03.1	702.2	710	700	CA Dept of Wtr Rsc.	PL 87-874.

Footnotes at end of table.

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LIST OF PROJECTS—Continued

[Pertinent project data]

Project name [1]	State, county and stream [1]	Exclusive-use					Multiple-use					Project owner [2]	Authorizing legislation [3]
		Flood control/navigation					Flood control/navigation						
		Storage (1,000 AF)	Elevation limits (feet, m.s.l.)		Area (acres)		Storage (1,000 AF)	Elevation limits (feet, m.s.l.)		Area (acres)			
			Upper	Lower	Upper	Lower		Upper	Lower	Upper	Lower		
Don Pedro Dam & Lk..	CA, Tuolumne, Tuolumne R						340.0	830.0	802.0	12,900	11,260	Modesto & Turlock Irr.	PL 78-534.
East Canyon Dam & Res.	UT, Morgan, East Canyon Creek.						48.0	5,705.5	5,577.0	684	127	USBR	PL 81-273.
Echo Dam & Res	UT, Summit, Weber River						74.0	5,560.0	5,450.0	1,455	0	USBR	PL 81-273.
Emigrant Dam & Res...	OR, Jackson, Emigrant Cr	39.0	2,241.0	2,131.5	801	80						USBR	PL 83-606.
Enders Dam & Res	NB, Chase, Frenchman Cr	30.0	3,127.0	3,112.3	2,405	1,707						USBR	PL 78-534.
Folsom Dam & Lk	CA, Sacramento, American R						400.0	466.0	427.0	11,450	9,040	USBR	PL 81-356.
Friant Dam & Millerton LK	CA, Fresno, San Joaquin River						390.0	578.0	466.3	4,850	2,101	USBR	PL 75-392, PL 76-868.
Gaston-Roanoke Rapids Dam Res.	NC, Northhampton, Halifax, Roanoke R.	63.0	203.0	200.0	22,500	20,300						VA Elec & Pwr Co.	Fed Pwr Act.
Glen Elder Dam & Waconda Lk.	KS, Mitchel, Solomon R	722.3	1,488.0	1,455.6	33,682	12,602						USBR	PL 78-534, PL 79-526.
Glendo Dam & Res	WY, Platte, N. Platte R	271.9	4,653.0	4,653.0,	17,986	12,365						USBR	PL 78-534.
Grand Coulee Dam, FDR Lk.	WA, Okanogan, Grant, Columbia R.						5,185.5	1,290.0	1,208.0	82,280	45,592	USBR	PL 89-561.
H. Neely Henry	AL, Calhoun, St. Clair, Coosa River.						49.7	508.0	502.5	11,235	7,632	Alabama, Pwr Co.	PL 83-436.
Heart Butte Dam & Lk Tschida.	ND, Grant, Heart River	150.0	2,094.5	2,064.5	6,625	3,400						USBR	PL 78-534.
Hells Canyon Dam & Res.	OR, Wallowa, ID, Adams, Snake River.						11.7	1,688.0	1,683.0	2,380	2,280	Idaho Pwr Co	FERC No 1971-A.
Hoover Dam & Lake Mead.	NV, Clark, AZ, Mohave, Colorado R.	1,500	1,229.0	1,219.6	162,700	156,500	15.8	1,219.6	1,083.0	156,500	83,500	USBR	PL 70-642.
Hungry Horse Dam & Res.	MT, Flathead, S. Fork Flathead R.	2,982.0	3,560.0	3,336.0	23,800	5,400						USBR	PL 78-329.
Indian Valley Dam & Res.	CA, Lake, N. Fork Cache Creek.						40.0	1,485.0	1,474.7	3,975	3,749	Yolo Cty Fl Cont & Wtr.	PL 84-984 Cons Dist.
Jamestown Dam & Res.	ND, Stutsman, James River	185.4	1,454.0	1,432.7	13,206	2,555	6.6	1,432.7	1,429.8	2,555	2,085	USBR	PL 78-534.
Kerr Dam, Flathead Lk.	MT, Lake, Flathead R						1,219.0	2,893.0	2,883.0	125,560	120,000	Montana Pwr Co.	FERC No 5.
Keyhole Dam & Res	WY, Crook, Belle Fourche River.	140.2	4,111.5	4,099.3	13,686	9,394						USBR	PL 78-534.

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Kirwin Dam & Res	KS, Phillips, N. Fork Solomon R.	215.1	1,757.3	1,729.3	10,640	5,073						USBR	PL 78-534.
Lemon Dam & Res	CO, La Plata, Florida R						39.0	8,148	8,023	622	62	USBR	PL 84-485
Lewis M. Smith Dam & Res.	AL, Walker, Culman, Sipsey Fork Black Warrior River.	260.0	522.0	510.0	25,700	21,200						Alabama Pwr Co.	Fed Pwr Act.
Little Wood	ID, Blain, Little Wood River	30.0	5,237.3	5,127.8	574	0						USBR	PL 84-993.
Logan Martin Dam & Res.	AL, Talladega, Coosa River	245.3	477.0	465.0	26,310	15,260						Alabama Pwr Co.	PL 83-436.
Los Banos Dam & Detention.	CA, Merced, Los Banos Cr						14.0	353.5	327.8	619	467	USBR	PL 86-468.
Lost Creek Dam & Res.	UT, Morgan, Lost Creek						20.0	6,005.0	5,912.0	365	93	USBR	PL 81-273.
Lovewell Dam & Res	KS, Jewell, White Rock Cr	50.5	1,595.3	1,582.6	5,025	2,986						USBR	PL 78-534.
Markham Ferry Dam, Lake Wash E. Hudson.	OK, Mayes, Grand Neosho River.	244.2	636.0	619.0	18,000	10,900						Grand R Dam Authority.	PL 76-476.
Mayfield Dam & Res	WA, Lewis, Cowlitz River						21.4	425.0	415.0	2,070	1,825	City of Tacoma.	FPC No 2016-A.
Medicine Cr Dam Harry Strunk Lk.	NB, Frontier, Medicine Cr	52.2	2,386.2	2,366.1	3,465	1,850						USBR	PL 78-534.
Mossyrock Dam Davisson Lk.	WA, Lewis, Cowlitz River						1,397.0	778.5	621.5	11,800	5,000	City of Tacoma.	FERC No 2016-B.
Navajo Dam & Res	NM, San Juan, Arriba, Rio, San Juan R.						1,036.1	6,085.0	5,990.0	15,610	7,400	USBR	PL 84-485.
New Exchequer Dam & Lake.	CA, Tuolumne, Merced River						400.0	867.0	799.7	7,110	4,849	Merced Irr	PL 86-645.
New Melones Dam & Lk.	CA, Tuolumne, Calaveras, Stanislaus R.						450.0	1,088.0	1,049.5	12,500	10,900	USBR	PL 87-874.
Norton Dam Res	KS, Norton, Prairie Dog Cr	98.8	2,331.4	2,304.3	5,316	5,316						USBR	PL 78-534.
Ochoco Dam & Res	OR, Crook, Ochoco Creek	51.4	3,136.2	3,048.1	1,150	120						USBR	PL 84-992.
Oroville Dam & Lake	CA, Butte, Feather River						750.0	900.0	848.5	15,800	13,346	CA Dept of Wtr Rsc.	PL 85-500.
Oxbow Dam & Res	OR, Baker, ID, Adams, Snake River.						5.0	1,805.0	1,800.0	1,165	1,115	Idaho Pwr Co	FERC No 1971-B.
Pactola Dam & Res	SD, Pennington, Rapid Creek	34.0	4,621.5	4,580.2	1,232	860						USBR	PL 78-534.

Footnotes at end of table.

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LIST OF PROJECTS—Continued

[Pertinent project data]

Project name [1]	State, county and stream [1]	Exclusive-use					Multiple-use					Project owner [2]	Authorizing legislation [3]
		Flood control/navigation					Flood control/navigation						
		Storage (1,000 AF)	Elevation limits (feet, m.s.l.)		Area (acres)		Storage (1,000 AF)	Elevation limits (feet, m.s.l.)		Area (acres)			
			Upper	Lower	Upper	Lower		Upper	Lower	Upper	Lower		
Palisades Dam & Res	ID, Bonneville, Snake River	1,202.0	5,620.0	5,452.4	16,100	2,170						USBR	PL 81-864.
Paonia Dam & Res	CO, Gunnision, Muddy Creek						17.0	6,447.5	6,373.0	334	120	USBR	PL 80-177, PL 84-485.
Pineview Dam & Res	UT, Weber, Odgen River						110.0	4,900.0	4,818.0	2,874	0	USBR	PL 81-273.
Platoro Dam & Res	CO, Conejos, Conejos R	6.0	10,034.0	10,027.5	947	920	54.0	10,027.5	9,911.0	920	0	USBR	PL 76-640.
Priest Rapid Dam & Res.	WA, Grant, Columbia R						44.0	488.0	481.0	7,100	6,500	Grant County PUD No 2.	FERC No 2114-A.
Pineville Dam & Res	OR, Crook, Crooked Cr	153.0	3,234.8	3,112.0	2,990	120						USBR	PL 84-992.
Prosser Cr & Res	CA, Nevada, Prosser Cr						20.0	5,741.2	5,703.7	745	334	USBR	PL 84-858.
Pueblo Dam & Res	CO, Pueblo, Arkansaw R	27	4,898.7	4,893.8	5664	5350	66.0	4,893.8	4,880.6	5,350	4,641	USBR	PL 87-590
Red Willow Dam, Hugh Butler Lk.	NB, Frontier, Red Willow	48.9	2,604.0	2,581.8	2,682	1,629						USBR	PL 78-534, PL 85-783.
Rine Dam & Res	ID, Bonneville, Willow Cr						99.0	5,119.0	5,023.0	1,560	360	USBR	PL 87-874.
Rocky Reach Dam Lk Entiat.	WA, Chelan, Columbia R						37.0	707.0	703.0	9,600	0	Chelan Cnty PUD No 1.	FERC No 2145.
Ross Dam & Res	WA, Whatcom, Skagit R						530.5	1,602.5	1,475.0	6,000	2,168	City of Seattle	FERC No 553-C.
Sanford Dam & Lk Meredith	TX, Hutchison, Canadian R	462.1	2,965.0	2,941.3	21,640	17,320						USBR	PL 81-898.
Savage River Dam & Res.	MD, Garrett, Savage R						16.0	1,468.5	1,400.0	366	127	Upper Potomac R Commission.	PL 78-534.
Shadehill Dam & Res	SD, Perkins, Grand R	217.7	2,302.0	2,272.0	9,900	4,800						USBR	PL 78-534.
Shasta Dam & Lake	CA, Shasta, Sacramento R						1,300.0	1,067.0	1,018.6	29,570	23,894	USBR	PL 75-392.
Smith Mtn & Leesville Dam & Res.	VA, Bedford, Compbell, VA, Pittsylvania, Roanoke River.						(4)	(4)	(4)	(4)	(4)	Appalachian Pwr Co.	Fed Pwr Act.
Stampede Dam & Res.	CA, Sierra, Little Truckee R						226.5	5,948.7	5,942.1	3,430	3,230	USBR	PL 84-858.
Trenton Dam & Res	NB, Hitchcock, Republican R	133.8	2,773.0	2,752.0	7,975	4,974						USBR	PL 78-534.
Twitchell Dam & Res	CA, Santa Barbara, Cuyama River.	89.0	651.5	623.0	3,690	2,650						USBR	PL 83-774.
Upper Baker Dam, Baker Lk.	WA, Whatcom, Baker River						220.6	724.0	655.0	4,890	0	Puget Sound Pwr Light Co.	PL 89-298, FERC 2150-B.
Vallecito Dam & Res	CO, La Plata, Los Pinos R						115.4	7,665	7,600	2,723	693	USBR	PL 61-288, PL 68-292.

Wanapum Dam & Res.	WA, Grant, Columbia R						151.6	571.5	560.0	14,400	9,600	Grant Cnty PUD No 2.	FERC No 2114-B.
Wanship Dam & Rockport.	UT, Summit, Weber River						61.0	6,037.0	5,930.0	1,077	121	USBR	PL 81-273.
Warm Springs Dam & Res.	OR, Malheur, Middle Fork Malheur R.						191.0	3,406.0	3,327.0	4,600	90	50% Vale Irr 50% USBR.	
Waterbury Dam & Res.	VT, Washington, Little River	27.2	617.5	592.0	1,330	890						State of VT	PL 78-534.
Weiss Dam & Res	AL, Cherokee, Coosa River	397.0	574.0	564.0	50,000	30,200						Alabama Pwr Co.	PL 83-436.
Wells Dam Lk Paterns.	WA, Douglas, Columbia R						74.0	799.0	711.0	10,700	7,700	Douglas Cnty PUD No 1.	FERC No 2149.
Webster Dam & Res	KS, Rocks, S. Fork Solomon R.	183.4	1,923.7	1,892.45	8,480	3,766						USBR	PL 534 78-2.
Yellowtail Dam & Bighorn Lk.	MT, Big Horn, Bighorn R	259.0	3,657.0	3,640.0	17,298	12,685	250.0	3,640.0	3,614.0	12,685	7,410	USBR	PL 78-534.

[1] Res—Reservoir; Lk—Lake; Div—Division; R—River; Cr—Creek.
[2] USBR—United States Bureau of Reclamation; Irr—Irrigation District; Mun—Muncipal; Fl—Flood; Rsc—Resources.
[3] PL—Public Law; HD—House Document; FERC—Federal Energy Regulatory Commission (formerly Federal Power Commission (FPC)).
[4] No specific FC/Nav. storage allocation.

(Sec. 7, Pub. L. 78-534, 58 Stat. 890 (33 U.S.C. 709); the Federal Power Act, 41 Stat. 1063 (16 U.S.C. 791(A)); and sec. 9, Pub. L. 83-436, 68 Stat. 303)

[43 FR 47184, Oct. 13, 1978, as amended at 46 FR 58075, Nov. 30, 1981]

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§ 208.19 Marshall Ford Dam and Reservoir (Mansfield Dam and Lake Travis), Colorado River, Tex.

The Secretary of the Interior, through his agent, the Lower Colorado River Authority (LCRA) shall operate the Marshall Ford Dam and Reservoir in the interest of flood control as follows:

(a) *Water Control Plan*—(1) *General objectives.* The objectives of the Marshall Ford Reservoir (Lake Travis) are the improvement of navigation, flood control, stream regulation, generation of power, irrigation, water supply, and recreation uses.

(2) *Overall plan for water control.* Within the Colorado River Basin, four Federal projects provide flood control protection: Twin Buttes, O. C. Fisher, Hords Creek, Marshall Ford Reservoir. The considerable distance (328 river miles) and large intervening area (19,990 square miles) separating Marshall Ford Reservoir and the three upper basin flood-control projects prevent realizing any significant benefits from coordinating releases to control the inflow into Marshall Ford. Marshall Ford Reservoir is the fifth project in a tandem of six lakes operated and controlled by the Lower Colorado River Authority for the generation of hydroelectric power. These six projects in downstream order are: Lake Buchanan, Lake Inks, Lake Lyndon B. Johnson (Alvin Wirtz Dam), Lake Marble Falls (Max Starcke Dam), Marshall Ford Reservoir (Lake Travis and Mansfield Dam) and Lake Austin (Tom Miller Dam). The releases from each of the six projects are closely coordinated by the LCRA System Operation Control Center. Three of the projects (Lake Inks, Lake Marble Falls, and Lake Austin) are run-of-the-river projects. The capabiity of the four upstream lakes to control the inflow of flood water into Marshall Ford depends on their antecedent lake elevations. The majority of inflows to Marshall Ford are comprised of the mainstream flows of the Colorado River, the tributary flows of the Llano River (entering the Colorado River between Lakes Inks and Lyndon B. Johnson) and the unregulated tributary flows of the Pedernales River (entering between Lake Marble Falls and Marshall Ford Reservoir). During flood conditions, the following upstream U.S. Geological Survey gaging stations are used as indicators of the magnitude of the inflows to Marshall Ford Reservoir:

(i) Colorado River near San Saba (08147000).

(ii) Pedernales River near Johnson City (08153500).

(iii) Llano River at Llano (08151500).

(3) *Standing instructions to dam tender.* During normal conditions, the dam tender will regulate the project in accordance with instructions received from the LCRA System Operator. During flood conditions, when the Marshall Ford Reservoir level is within the flood control zone, the LCRA System Operator will regulate the project in accordance with instructions received from the Corps of Engineers. In the event of a communication outage, the LCRA System Operator will rely on the Emergency Release Schedule, to make changes in the rate of releases from the lake.

(4) *Flood control regulation*—(i) *General.* At all times, releases shall be coordinated such that the Colorado River, Texas, will be controlled when possible, to remain below control stages at downstream official U.S. Geological Survey (USGS) gaging stations; except that no curtailment of normal hydroelectric turbine releases shall result thereby at any time. The USGS river stations and their control stages are as follows:

KEY DOWNSTREAM CONTROL POINTS

Station	Control stage (feet)	Equivalent cubic feet per second (c.f.s.)
Austin (08158000)	20.5	30,000
	[1]24.8	[1]50,000
Bastrop (08159200)	25.1	45,000
	[1]26.7	[1]50,000
Columbus (08161000)	25.5	50,000

[1]Control stage when elevation 710 is forecast to be exceeded.

Forecasted reservoir inflows and the upstream USGS gaging stations Pedernales River near Johnson City (08153500), Llano River at Llano (08151500), and Colorado River near San Saba (08147000) will be considered when scheduling flood releases.

(ii) *Flood control release schedule.* Marshall Ford will be regulated to reduce flooding on the Colorado River below the dam. This plan of regulation will govern flood control releases from Marshall Ford Dam as follows:

(A) *Elevation 681-683.* If the reservoir level is forecast to rise above elevation 681 feet, m.s.l. (top of conservation pool) but not to exceed elevation 683 feet, m.s.l., the releases shall be increased to 3,000 c.f.s. and maintained until the reservoir level recedes to elevation 681 feet, m.s.l. These release rates may need to be reduced due to excessive downstream runoff to prevent exceeding the control stages specified in paragraph (a)(4)(i) of this section.

(B) *Elevation 683-685.* If the reservoir elevation is forecast to rise above elevation 683 feet, m.s.l. but not to exceed elevation 685 the releases shall be increased to 5,000 c.f.s. and maintained until the reservoir level recedes below 683 feet, m.s.l. These release rates may need to be reduced due to excessive downstream runoff to prevent exceeding the control stages specified in paragraph (a)(4)(i) of this section.

(C) *Elevation 685-691.* Seasonal. (*1*) During the months of January through April, July through August, and November through December: If the reservoir elevation is forecast to rise above elevation 685 feet, m.s.l. but not to exceed elevation 691, the releases shall be increased to 5,000 c.f.s. and maintained until the reservoir level recedes below 683 feet, m.s.l. These release rates may need to be reduced due to excessive downstream runoff to prevent exceeding the control stages specified in paragraph (a)(4)(i) of this section.

(*2*) During the months of May, June, September, and October: Should the reservoir elevation be forecast to exceed 685 feet, m.s.l. but not to exceed elevation 691 feet, m.s.l: Releases will be made at 30,000 c.f.s. from the project or at a rate such that, when combined with local inflows below the dam, will equal but not exceed downstream control stages on the Colorado River as specified in paragraph (a)(4)(i) of this section. These release rates will be maintained until the reservoir level falls below elevation 685 feet, m.s.l.

(D) *Elevation 691-710.* Should the reservoir elevation be forecast to exceed 691 feet, m.s.l. (the top of the joint use pool) but not to exceed elevation 710 feet, m.s.l: Releases will be made at 30,000 c.f.s. from the project or at a rate such that, when combined with local inflows below the dam, will equal but not exceed downstream control stages on the Colorado River as specified in paragraph (a)(4)(i) of this section. These release rates will be so controlled until the reservoir level falls below elevation 691 feet, m.s.l.

(E) *Elevation 710-714.* If the reservoir level is forecast to exceed 710 feet, m.s.l. but not to exceed elevation 714 feet, m.s.l: Releases will be made at 50,000 c.f.s. from the project or at a rate such that, when combined with local inflows below the dam, will equal but not exceed the downstream control stages on the Colorado River as specified in paragraph (a)(4)(i) of this section. These release rates will be maintained until the reservoir level falls below elevation 710 feet, m.s.l.

(F) *Elevation 714-722.* If the reservoir level is forecast to exceed 714 feet, m.s.l. but not to exceed 722 feet, m.s.l: Releases will be made at 90,000 c.f.s. from the project. Releases shall not exceed the associated peak flood reservoir inflow.

(G) *Elevation 722 and above.* If the reservoir level is forecast to exceed elevation 722 feet, m.s.l., the Bureau of Reclamation will schedule releases as

required for the safety of the structure.

(iii) *Normal flood control regulation schedule.* The following table, Flood Control Regulation Schedule, summarizes the flood control releases schedule for given reservoir levels and river conditions:

MARSHALL FORD DAM AND RESERVOIR NORMAL FLOOD CONTROL REGULATION SCHEDULE

Condition	Reservoir level	Flood control release	Control points
Pool Rising	Forecast: 681-683 [1]	3,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 683-685	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 685-691:		
	(a) During January, February, March, April, July, August, November, December.	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
	(b) During May, June, September, October.	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 691-710	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 710-714	50,000 c.f.s	50,000 c.f.s. (24.8 ft.) at Austin. 50,000 c.f.s. (26.7 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 714-722 [2]	90,000 c.f.s	No controls.
Do	Forecast: above 722	The Bureau of Reclamation will specify the releases for safety of the structure.	
Pool Falling	Above 722	....do	
Do	722-714 [2]	90,000 c.f.s	No controls.
Do	714-710	50,000 c.f.s	50,000 c.f.s. (24.8 ft.) at Austin. 50,000 c.f.s. (26.7 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	710-691	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	691-685:	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin.
	(a) During May, June, September, October.		45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
	(b) During January, February, March, April, July, August, November, December.	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.

MARSHALL FORD DAM AND RESERVOIR NORMAL FLOOD CONTROL REGULATION SCHEDULE—Continued

Condition	Reservoir level	Flood control release	Control points
Do	685–683	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	683–681	3,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.

[1]During flood conditions, when the reservoir level is below elevation 681 ft., m.s.l., the Corps of Engineers will provide recommendations to the Lower Colorado River Authority on flood control releases.
[2]Releases shall not exceed the associated peak flood reservoir inflow.

NOTE: No curtailment of normal hydroelectric turbine releases shall be required due to flood control operations.

(5) *Deviation from normal regulation.* (i) There are occasions when it is necessary or desirable to deviate from the water control plan for short periods of time as indicated in the following paragraphs:

(A) The water control plan is subject to temporary modification by the Corps of Engineers, if found necessary in time of emergency. Requests for and action on such modifications may be made by the fastest means of communication available. The action taken shall be confirmed in writing the same day to the project owner and shall include justification for the action.

(B) The project owner may temporarily deviate from the water control plan in the event an immediate short-term departure is deemed necessary for emergency reasons to protect the safety of the dam, or to avoid serious hazards. Such actions shall be immediately reported by the fastest means of communication available. Actions shall be confirmed in writing the same day to the Corps of Engineers and shall include justification for the action. Continuation of the deviation will require the express approval of the Chief of Engineers, or his duly authorized representative.

(C) Advance approval of the Chief of Engineers, or this duly authorized representative, is required prior to any deviation from the plan of regulation prescribed or approved by the Corps of Engineers in the interest of flood control and/or navigation, except in emergency situations provided for in paragraph (a)(5)(i)(B) of this section. When conditions appear to warrant a prolonged deviation from the approved plan, the project owner and the Corps of Engineers will jointly investigate and evaluate the proposed deviation to insure that the overall intergrity of the plan would not be unduly compromised. Approval of prolonged deviations will not be granted unless such investigations and evaluations have been conducted to the extent deemed necessary by the Chief of Engineers, or his designated representative, to fully substantiate the deviations.

(ii) The Fort Worth District Corps of Engineers will serve as the LCRA contact point for any deviation from or modification of the water control plan. The communication network will be described in the Water Control Manual. The Fort Worth District will notify the Division Engineer, Southwestern Division, Corps of Engineers of any deviations or modifications of the water control plan and request his approval. The Division Engineer has been designated as the authorized representative of the Chief of Engineers in matters relating to projects within the Southwestern Division which are subject to provisions of Section 7 of the 1944 Flood Control Act.

(b) *Reports to the Corps of Engineers.* (1) The Authority shall furnish the District Engineer, Fort Worth District, U.S. Army Corps of Engineers, by 0900 hours daily, with the following:

(i) Project information.

(A) Lake elevations at midnight and 0800 hours.

(B) Uncontrolled spillway, flood-control conduits, and turbine releases: Cubic feet per second at 0800 hours, and day-second-feet average for the previous 24 hours, ending at midnight.

(C) Computed average inflow, in day-second-feet for the previous 24 hours, ending at midnight.

(D) Total precipitation in inches for the previous 24 hours at the dam, ending at 0800 hours.

(E) Summary of streamflow and channel conditions at gages named in paragraphs (a)(2) and (a)(4)(i) of this section.

(ii) Lake Buchanan Pool elevation at 0800 hours.

(2) Whenever flood conditions are imminent, or stages of 16 feet (20,000 c.f.s.) or more at the Austin gage have been reached, the Authority shall report at once to the District Engineer by the fastest means of communications available. Data listed in paragraph (b)(1) of this section shall be reported to, and at intervals prescribed by the District Engineer for the duration of flood surveillance and control operations.

(Sec. 7, Pub. L. 78-534, 58 Stat. 890 (33 U.S.C. 709))

[44 FR 24552, Apr. 26, 1979; 44 FR 29050, May 18, 1979]

§ 208.22 Twin Buttes Dam and Reservoir, Middle and South Concho Rivers, Tex.

The Bureau of Reclamation, or its designated agent, shall operate the Twin Buttes Dam and Reservoir in the interest of flood control as follows:

(a) Whenever the Twin Buttes Reservoir level is between elevations 1,940.2 (top of conservation pool) and elevation 1,969.1 (top of flood control pool) the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with releases from San Angelo Reservoir on the North Concho River and local inflow below the dam, will not produce flows in excess of bankful capacities on the South Concho and Concho Rivers downstream of the reservoir. In order to accomplish this purpose, flows shall not exceed a 22.5-foot stage (25,000 c.f.s.) on the USGS gage on the Concho River near San Angelo, Tex. (river mile 60.9); or a 22.8-foot stage (25,000 c.f.s.) on the USGS gage near Paint Rock, Tex. (river mile 19.6).

(b) When the Twin Buttes Reservoir level exceeds elevation 1,969.1 (top of flood control pool), releases shall be made at the maximum rate possible and continued until the pool elevation recedes to elevation 1,969.1 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation in immediate charge of operation of the Twin Buttes Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing (1) for Twin Buttes Reservoir, the elevation of the reservoir level; number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway releases; storage; reservoir inflow; available evaporation data; and precipitation in inches; and (2) for Nasworthy Reservoir, the elevation of the reservoir level; irrigation outlet works and controlled spillway releases; storage; tailwater elevation; and reservoir inflow. Normally, one reading at 8 a.m. shall be shown for each day. Readings of all items except evaporation shall be shown for at least three observations a day when the Twin Buttes Reservoir level is above elevation 1,940.2. Whenever the Twin Buttes Reservoir level rises to elevation 1,940.2 and releases for flood regulation are necessary or appear imminent, the Bureau representative shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1,940.2. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section insofar as they govern use of the flood

control storage capacity in Twin Buttes Reservoir above elevation 1,940.2 are subject to temporary modification in time of flood by the District Engineer, if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation in immediate charge of operations of the Twin Buttes Dam by any available means of communication and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, with a copy to the representative in charge of the Twin Buttes Dam.

(e) Flood control operation shall not restrict releases necessary for municipal, industrial, and irrigation uses.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the Twin Buttes Dam and Reservoir from major damage or inconsistent with safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 32,470 c.f.s. with the reservoir level at elevation 1,969.1) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC-5274 as modified by revised drawings and criteria in Designers' Operating Criteria, Twin Buttes Dam, dated February 1963).

(h) All elevations stated in this section are at Twin Buttes Dam and are referred to the datum in use at that location.

[31 FR 12521, Sept. 22, 1966]

§ 208.25 Pensacola Dam and Reservoir, Grand (Neosho) River, Okla.

The representative of the agency charged with the operation of the Pensacola Dam, referred to in this section as the Representative shall operate the dam and reservoir in the interest of flood control as follows:

(a) Whenever the pool stage exceeds elevation 745 at the dam, the discharge facilities shall be operated under the direction of the District Engineer, Engineer Department at Large, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir and to limit the pool stage to elevation 755 at the dam.

(b) The District Engineer will advise the Representative when inflow rates are anticipated which will raise the pool above elevation 745 at the dam. The District Engineer will also advise the Representative of essential increase in the flood control storage capacity of the reservoir which should be provided by drawing the pool down below elevation 745 at the dam in order to obtain maximum flood control benefits, with the provision that the suggested reduction in power storage shall at no time exceed the replacement volume of flow then in sight in the streams above the reservoir.

(c) The Representative shall furnish the District Engineer, daily, a report showing the elevation of the reservoir pool and the tailwater, number of gates in operation, spillway and turbine releases, evaporation, storage, reservoir inflow, and precipitation in inches as shown by Agency gages. One reading shall be shown for each day with additional readings of releases for all changes in spillway gate operation, and with readings of all items except evaporation three times daily when the District Engineer advises the Representative that flood conditions are imminent. By agreement between the Representative and the District Engineer, any of the foregoing information may be furnished by telephone and may, if agreed upon, be omitted from the report. Whenever the pool is above elevation 745 at the dam the Representative shall submit additional reports by telegraph or telephone as directed by the District Engineer, with a report to be furnished immediately whenever the pool rises above elevation 745 at the dam.

(d) The District Engineer will furnish the Representative with all available information and detailed instructions for operation of the reservoir in the interest of flood control during an emergency condition when communications between the dam and the District Office are broken. In the event

that the District Engineer or his authorized representative cannot be reached by telephone, telegraph or by other means during a flood emergency, these instructions will govern. The provisions of paragraphs (a), (b), and (c) of this section will govern at all times except during such an emergency.

(e) Elevations stated in this section are referred to Pensacola datum which is 1.07 feet below mean sea level.

[10 FR 15044, Dec. 14, 1945]

§ 208.26 Altus Dam and Reservoir, North Fork Red River, Okla.

The Bureau of Reclamation, or its designated agent, shall operate the Altus Dam and Reservoir in the interest of flood control as follows:

(a) Flood control storage in the reservoir between elevation 1559 (top of conservation pool) and elevation 1562 (top of flood control pool) amounts to 21,448 acre-feet (based on 1953 sedimentation survey). Whenever the reservoir level is within this elevation range, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the dam, and to limit the reservoir level to elevation 1562 when possible.

(b) When the reservoir level is below elevation 1559 and the predicted volume of runoff from the area above the dam exceeds the volume of water necessary to raise the reservoir level above elevation 1559, the reservoir will be operated to obtain maximum overall benefits which may consist of preflood releases: *Provided*, That all preflood releases will have prior concurrence of the Bureau of Reclamation or its designated agent. The preflood releases shall not result in a reservoir level below elevation 1559 at the end of the flood.

(c) When the reservoir level exceeds elevation 1559, releases will be made equal to inflow or 2,000 c.f.s., whichever is smaller, except that when the reservoir elevation forecast indicates that this operation will result in a reservoir level exceeding elevation 1562, releases will be increased in order to provide maximum overall benefits and prevent the reservoir level from exceeding elevation 1562, insofar as possible. The flood control pool will be emptied by continuing the peak discharge rate until the reservoir level recedes to elevation 1559, at which time releases will be made equal to inflow.

(d) If the reservoir level exceeds elevation 1562 (top of flood control pool) releases shall be made at the maximum rate possible through the spillway gates, conduit, and the uncontrolled spillway and continued until the reservoir level recedes to elevation 1559, at which time releases will be made equal to inflow.

(e) Whenever the reservoir level is above elevation 1559 and communication with the Bureau of Reclamation Regional Office and the Corps of Engineers District Office is unobtainable, releases shall be made equal to inflow until all gates are fully open. The maximum release thus obtained shall be maintained until the pool recedes to elevation 1559 at which time releases shall be made to equal inflow.

(f) The representative of the Bureau of Reclamation, or its designated agent, in immediate charge of the operation of Altus Dam will furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report on forms provided by the District for this purpose, showing the reservoir pool elevation; the number of spillway gates in operation with their respective opening and releases; the uncontrolled spillway release; conduit, canal outlet wasteway, and irrigation releases; storage; reservoir inflow; available evaporation data; and precipitation in inches. A reading at 8 a.m., noon, 4 p.m., and midnight, shall be shown for each day. Whenever the reservoir level rises to elevation 1559 and releases for flood control regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report at 8 a.m., noon, and 3 p.m. thereafter, in that manner, until the reservoir level recedes to elevation 1559. These latter reports shall reach the District Engi-

neer by 9 a.m., 1 p.m., and 4 p.m. each day.

(g) The regulations of this section, insofar as they govern use of the flood control storage capacity above elevation 1559 are subject to temporary modification by the District Engineer in time of flood, if found desirable on the basis of conditions at the time. Such desired modifications shall be coordinated with and approved by the Bureau of Reclamation.

(h) Flood control operation shall not restrict releases necessary for irrigation, municipal, and industrial uses.

(i) Releases made in accordance with the regulations of this section are subject to the conditions that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage.

(j) Any time that the Bureau of Reclamation determines that operation in accordance with the regulations of this section will jeopardize the safety of Altus Dam, they will so advise the District Engineer and will assume operational responsibility and take action necessary to assure the safety of the dam.

(k) The discharge characteristics of the controlled and the uncontrolled spillways (capable of discharging approximately 42,800 c.f.s. and 2,000 c.f.s., respectively, with the reservoir level at elevation 1562) shall be maintained in accordance with the construction plans (Bureau of Reclamation Drawing No. 258-D-69).

(l) All elevations stated in this section are at Altus Dam and are referred to the datum in use at that location.

[33 FR 12733, Sept. 7, 1968]

§ 208.27 Fort Cobb Dam and Reservoir, Pond (Cobb) Creek, Oklahoma.

The Bureau of Reclamation shall operate the Fort Cobb Dam and Reservoir in the interest of flood control as follows:

(a) Whenever the reservoir level is between elevation 1342.0, top of the conservation pool, and elevation 1354.8, top of flood control pool, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on Pond (Cobb) Creek downstream of the reservoir and on the Washita River downstream of their confluence. In order to accomplish this purpose, flows shall not exceed a 13.0-foot stage (1,300 cfs) on the USGS gage on Pond (Cobb) Creek near Fort Cobb, Oklahoma, river mile 5.0; a 19.0-foot stage (6,000 cfs) on the USGS gage on the Washita River near Anadarko, Oklahoma, river mile 305.0; or a 19.0-foot stage on the USGS gage near Bradley, Oklahoma, river mile 210.6.

(b) When the reservoir level exceeds elevation 1354.8, top of flood control pool, releases shall be made at the maximum rate possible and continued until the pool elevation recedes to elevation 1354.8 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation in immediate charge of operation of the Fort Cobb Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer showing the elevation of the reservoir level; number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway and municipal outlet works release; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, one reading at 8:00 a.m., shall be shown for each day. Readings of all items except evaporation shall be shown for at least three observations a day when the reservoir level is above elevation 1342.0. Whenever the reservoir level rises to elevation 1342.0 and releases for flood regulation are necessary or appear imminent, the Bureau representative shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall

report once daily thereafter in that manner until the reservoir level recedes to elevation 1342.0. These latter reports shall reach the District Engineer by 9:00 a.m., each day.

(d) The regulations of this section insofar as they govern use of the flood control storage capacity above elevation 1342.0 are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation in immediate charge of operations of the Fort Cobb Dam by any available means of communication and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, with a copy to the representative in charge of the Fort Cobb Dam.

(e) Flood control operation shall not restrict releases necessary for municipal-industrial and irrigation uses:

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with safe routing of the inflow design flood.

(g) All elevations stated in this section are at Fort Cobb Dam and are referred to the datum in use at that location.

[26 FR 3190, Apr. 14, 1961]

§ 208.28 Foss Dam and Reservoir, Washita River, Oklahoma.

The Bureau of Reclamation shall operate the Foss Dam and Reservoir in the interest of flood control as follows:

(a) Whenever the reservoir level is between elevation 1652.0, top of conservation pool, and elevation 1668.6, top of flood control pool, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on the Washita River downstream of the reservoir. In order to accomplish this purpose, flows shall not exceed an 18.0 foot stage (3,000 c.f.s.) on the USGS gage on the Washita River near Clinton, Oklahoma, river mile 447.4, or an 18.0 foot stage (6,000 c.f.s.) on the USGS gage on the Washita River near Carnegie, Oklahoma, river mile 353.9.

(b) When the reservoir level exceeds elevation 1668.6, top of flood control pool, releases shall be made at the maximum rate possible through the river outlet works and uncontrolled spillway and continued until the pool elevation recedes to elevation 1668.6 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation in immediate charge of operation of the Foss Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, on forms provided by the District Engineer for this purpose, a report, showing the elevation of the reservoir level; number of river outlet works gates in operation with their respective openings and releases; canal outlet works, municipal outlet works and uncontrolled spillway releases; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, one reading at 8:00 a.m. shall be shown for each day. Readings of all items except evaporation shall be shown for at least three observations a day when the reservoir level is above elevation 1652.0. Whenever the reservoir level rises to elevation 1652.0 and releases for flood regulation are necessary or appear imminent, the Bureau representative shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1652.0. These latter reports shall reach the District Engineer by 9:00 a.m., each day.

(d) The regulations of this section insofar as they govern use of the flood control storage capacity above eleva-

tion 1652.0 are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation in immediate charge of operations of the Foss Dam by any available means of communication and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, with a copy to the representative in charge of the Foss Dam.

(e) Flood control operations shall not restrict releases necessary for municipal-industrial and irrigation uses.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with safe routing of the inflow design flood.

(g) All elevations stated in this section are at Foss Dam and are referred to the datum in use at that location.

[26 FR 6982, Aug. 3, 1961]

§ 208.29 Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.

The Bureau of Reclamation, or its designated agent, shall operate the Arbuckle Dam and Lake of the Arbuckles in the interest of flood control as follows:

(a) Flood control storage in Lake of the Arbuckles between elevation 872 (top of conservation pool) and elevation 885.3 (top of flood control pool) initially amounts to 36,400 acre-feet. Whenever the lake level is within this elevation range the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable of the flood damage below the lake. In order to accomplish this purpose, flood control releases shall be limited to amounts, which when combined with local inflows below the dam will not produce flows in excess of bankfull on Rock Creek downstream of the lake and on the Washita River, from the confluence of Rock Creek to Durwood, Okla. Operating stages and corresponding flows are as follows: An 11-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on Rock Creek near Dougherty, Okla., river mile 1; and a 20-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on the Washita River near Durwood, Okla., river mile 63.4.

(b) When the level in Lake of the Arbuckles exceeds elevation 885.3 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the lake level recedes to elevation 885.3 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Arbuckle Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing the lake elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; tailwater elevation; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m., and midnight shall be shown for each day. Whenever the lake level rises to elevation 872 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and unless otherwise instructed shall report once daily thereafter in that manner until the lake level recedes to elevation 872. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 872, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of

the Bureau of Reclamation and its designated agent in immediate charge of operation of the Arbuckle Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Arbuckle Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and lake from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 1,880 c.f.s. when the lake level is at 872) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. 6099 as modified by the "as built" drawings).

(h) All elevations stated in this section are at Arbuckle Dam and are referred to the datum in use at that location.

[33 FR 263, Jan. 9, 1968]

§ 208.32 Sanford Dam and Lake Meredith, Canadian River, Tex.

The Bureau of Reclamation, or its designated agent, shall operate the Sanford Dam and Lake Meredith in the interest of flood control as follows:

(a) Flood control storage in the reservoir, Lake Meredith, between elevation 2941.3 (top of conservation pool) and elevation 2965.0 (top of flood control pool) initially amounts to 462,100 acre-feet. Whenever the reservoir level is within this elevation range, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on the Canadian River downstream of the reservoir. In order to accomplish this purpose, flows shall not exceed 25,000 c.f.s. at the Sanford Dam site or an 8.0-foot stage (75,000 c.f.s.) on the U.S.G.S. gage on the Canadian River near Canadian, Tex., river mile 433.9.

(b) When the reservoir level exceeds elevation 2965.0 (top of flood control pool) releases shall be made at the maximum rate possible through the flood control outlet works, the river outlet works and the uncontrolled spillway and continue until the pool level recedes to elevation 2965.0 when releases will be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation, or its designated agent in immediate charge of operation of the Sanford Dam will furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose showing the pool elevation; the number of flood control outlet works gates in operation with their respective openings and releases; the uncontrolled spillway release; and the municipal outlet works release; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally a reading at 8 a.m., noon, 4 p.m., and midnight, shall be shown for each day. Readings of all items except evaporation shall be shown for at least four observations a day when the reservoir level is at or above elevation 2941.3. Whenever the reservoir level rises to elevation 2941.3 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation, or its designated agent, shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, will report once daily thereafter in that manner until the reservoir level recedes to elevation 2941.3. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of the flood control storage capacity above elevation 2941.3, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operation of the Sanford Dam by the best available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Sanford Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Release made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the flood control outlet works (capable of discharging approximately 22,000 c.f.s. with the reservoir level at elevation 2941.3) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC-5725 as modified by revised drawings and criteria in Designers' Operating Criteria, Sanford Dam, dated October 1965).

(h) All elevations stated in this section are at Sanford Dam and are referred to the datum in use at that location.

[31 FR 7751, June 1, 1966]

§ 208.33 Cheney Dam and Reservoir, North Fork of Ninnescah River, Kans.

The Bureau of Reclamation, or its designated agent, shall operate the Cheney Dam and Reservoir in the interest of flood control as follows:

(a) Flood control storage in the reservoir is the capacity between elevation 1421.6 (top of the conservation pool) and elevation 1429.0 (top of the flood control pool), and initially amounts to 80,860 acre-feet. Whenever the reservoir level is within this range the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on the North Fork of Ninnescah and Ninnescah River downstream of the reservoir and on the Arkansas River to Arkansas City, Kans. In order to accomplish this, flows shall not exceed a 90-foot stage (2,500 c.f.s.) on the U.S.G.S. gage on North Fork of Ninnescah River near Cheney, Kans., river mile 8.8; a 12-foot stage (7,000 c.f.s.) on the U.S.G.S. gage on Ninnescah River near Peck, Kans., river mile 31.6; and a 16-foot stage (18,000 c.f.s.) on the U.S.W.B. gage on Arkansas River at Arkansas City, Kans., river mile 701.4.

(b) When the reservoir level exceeds elevation 1429.0 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the pool recedes to elevation 1429.0 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Cheney Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing the pool elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m., and midnight, shall be

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shown for each day. Whenever the reservoir pool rises to elevation 1421.6 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph, and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir pool recedes to elevation 1421.6. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 1421.6, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operations of the Cheney Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Cheney Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 3,590 c.f.s. with the reservoir level at elevation 1421.6) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC-5744 as modified by revised drawings and criteria in Designers' Operating Criteria, Cheney Dam, dated November 1964).

(h) All elevations stated in this section are at Cheney Dam and are referred to the datum in use at that location.

[31 FR 7751, June 1, 1966]

§ 208.34 Norman Dam and Lake Thunderbird, Little River, Okla.

The Bureau of Reclamation, or its designated agent, shall operate Norman Dam and Lake Thunderbird in the interest of flood control as follows:

(a) Flood control storage in Lake Thunderbird between elevation 1039 (top of the conservation pool) and elevation 1049.4 (top of flood control pool) initially amounts to 76,600 acre-feet. Whenever the reservoir level is within this elevation range the flood control discharge facilities at Norman Dam shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. In order to accomplish this purpose, flood control releases shall be limited to amounts which, when combined with local inflows below the dam, will not produce flows in excess of bankfull on the Little River downstream of the reservoir. Controlling bankfull stages and corresponding flows, as presently estimated, are as follows: A 7.5-foot stage (1,800 c.f.s.) on the U.S.G.S. gage on Little River near Tecumseh, Okla., river mile 77.2 and a 17-foot stage (6,500 c.f.s.) on the U.S.G.S. gage on Little River near Sasakwa, Okla., river mile 24.1.

(b) When the reservoir level in Lake Thunderbird exceeds elevation 1049.4 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the pool recedes to elevation 1049.4 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Norman Dam shall furnish daily

to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer showing the pool elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; storage; tail water elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m. and midnight, shall be shown for each day. Whenever the reservoir level rises to elevation 1039 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1039. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 1039.0, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operations of the Norman Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Norman Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 5,400 c.f.s. with the reservoir level at elevation 1039.0) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC-5793 as revised by the "as built drawings").

(h) All elevations stated in this section are at Norman Dam and are referred to the datum in use at that location.

[34 FR 4967, Mar. 7, 1969]

§ 208.82 Hetch Hetchy, Cherry Valley, and Don Pedro Dams and Reservoirs.

The Turlock Irrigation District and Modesto Irrigation District, acting jointly, hereinafter called the Districts, shall operate Don Pedro Dam and Reservoir in the interest of flood control, and the City and County of San Francisco, hereinafter called the City, shall operate Hetch Hetchy Dam and Reservoir and Cherry Valley Dam and Reservoir in the interest of flood control all as follows:

(a) Storage space in Don Pedro Reservoir shall be kept available for flood-control purposes in accordance with the Flood-Control Storage Reservation Diagram currently in force for that reservoir, except when storage of floodwater is necessary as prescribed in paragraph (d) of this section. The Flood-Control Storage Reservation Diagram in force as of the promulgation of this section is that dated 4 April 1956, File No. TU-1-26-7, and is on file in the Office of the Chief of Engineers, Department of the Army, Washington, D.C., in the office of the Turlock Irrigation District, Turlock, California, and in the office of the Modesto Irrigation District, Modesto, California. Revisions of the Flood-Control Storage Reservation Diagram may be developed from time to time as necessary by the Corps of Engineers and the Districts. Each such revision shall be effective upon the date specified in the approval thereof by the Chief of Engineers and by the presidents of the Districts and from that date until replaced shall be the Flood-

Control Storage Reservation Diagram currently in force for the purpose of this section. Copies of the Flood-Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the office of the District Engineer, Corps of Engineers, in charge of the locality, the office of the Turlock Irrigation District, Turlock, California, and the office of the Modesto Irrigation District, Modesto, California.

(b) Storage space in Hetch Hetchy Reservoir shall be kept available for flood-control purposes in accordance with the Flood-Control Storage Reservation Diagram for that reservoir currently in force, except when storage of floodwater is necessary as prescribed in paragraph (e) of this section. The Flood-Control Storage Reservation Diagram in force as of the promulgation of this section is that dated April 4, 1956, File No. TU-3-26-1, and is on file in the Office. Chief of Engineers, Department of the Army, Washington, D.C., and in the office of the Public Utilities Commission of the City and County of San Francisco, California. Revisions of the Flood-Control Storage Reservation Diagram may be developed from time to time as necessary by the Corps of Engineers and the City. Each such revision shall be effective upon the date specified in the approval thereof by the Chief of Engineers and by the Public Utilities Commission of the City and County of San Francisco, California, and from that date until replaced shall be the Flood-Control Storage Reservation Diagram currently in force for the purpose of this section. Copies of the Flood-Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the office of the District Engineer, Corps of Engineers, in charge of the locality, and the office of the Public Utilities Commission of the City and County of San Francisco, California.

(c) Storage space in Cherry Valley Reservoir shall be kept available for flood-control purposes in accordance with the Flood-Control Reservation Diagram currently in force for that reservoir except when storage of floodwater is necessary as prescribed in paragraph (e) of this section. The Flood-Control Storage Reservoir Diagram in force as of the promulgation of this section is that dated April 4, 1956, File No. TU-2-26-6, and is on file in the Office, Chief of Engineers, Corps of Engineers, Department of the Army, Washington, D.C., and in the office of the Public Utilities Commission of the City and County of San Francisco, California. Revisions of the Flood-Control Storage Reservation Diagram may be developed from time to time as necessary by the Corps of Engineers and the City. Each such revision shall be effective upon the date specified in the approval thereof by the Chief of Engineers and by the Public Utilities Commission of the City and County of San Francisco, California, and from that date until replaced shall be the Flood-Control Storage Reservation Diagram currently in force for the purpose of this section. Copies of the Flood-Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the office of the District Engineer, Corps of Engineers, in charge of the locality, and the office of the Public Utilities Commission of the City and County of San Francisco, California.

(d) Any water temporarily stored in the flood-control space indicated by the Flood-Control Storage Reservation Diagram currently in force for Don Pedro Reservoir shall be released as rapidly as can be accomplished without causing flows in Tuolumne River below LaGrange Dam to exceed 7,000 c.f.s. during rain floods or to exceed 9,000 c.f.s. at all other times.

(e) Any water temporarily stored in the flood-control space indicated by the Flood-Control Storage Reservation Diagrams currently in force for Hetch Hetchy and Cherry Valley Reservoirs shall be released as rapidly as can be accomplished without exceeding the respective safe channel capacities, and without materially contributing to major encroachment into the flood-control space at Don Pedro Reservoir. Such releases shall be proportioned between Hetch Hetchy and Cherry Valley Reservoirs in such manner as to assure that the percentage of encroachment into the flood-control space at the two reservoirs will

tend toward equality insofar as possible. Whenever the storage space in Don Pedro Reservoir is less than 90 percent of that indicated by the Flood-Control Storage Reservation Diagram currently in force for that reservoir, releases from Hetch Hetchy and Cherry Valley Reservoirs shall be restricted to those required in connection with the generation of hydroelectric power in the power system of the City and in connection with diversion into the water supply system of the City.

(f) In the event that the water level in Don Pedro Reservoir rises above elevation 605.55 at the dam (top of spillway gates), subsequent operation of the dam shall be such as to cause downstream flows to exceed as little as possible the criteria prescribed in paragraph (d) of this section, and in no event to cause the maximum subsequent release from the reservoir to exceed the estimated maximum subsequent inflow to the reservoir.

(g) In the event that the water level in Hetch Hetchy Reservoir rises above elevation 3806 at the dam (top of spillway gates), subsequent operation of the dam shall be such as to cause downstream flows to exceed as little as possible the criteria prescribed in paragraph (e) of this section, and in no event to cause the maximum subsequent release from the reservoir to exceed the estimated maximum subsequent inflow to the reservoir.

(h) In the event that the water level in Cherry Valley Reservoir rises above elevation 4700 at the dam (spillway crest), subsequent operation of the dam shall be such as to cause downstream flows to exceed as little as possible the criteria prescribed in paragraph (e) of this section, and in no event to cause the maximum subsequent release from the reservoir to exceed the estimated maximum subsequent inflow to the reservoir.

(i) Nothing in the regulations of this section shall be construed to require dangerously rapid changes in magnitudes of releases from any of the reservoirs.

(j) The Districts shall procure such current basic hydrologic data, make such current determinations of required flood-control storage reservation in Don Pedro Reservoir, and current calculations of permissible releases from Don Pedro Reservoir as are required to accomplish the flood-control objectives of the regulations of this section.

(k) The City shall procure such current basic hydrologic data, and make such current calculations of permissible releases from Hetch Hetchy and Cherry Valley Reservoirs as are required to accomplish the flood-control objectives of the regulations of this section.

(l) The City shall keep the District Engineer, Corps of Engineers, in charge of the locality, and the Districts currently advised of reservoir releases, reservoir storages, basic operating criteria which affect the schedule of operations, and such other operating data as the District Engineer, Corps of Engineers, may request for Hetch Hetchy, Eleanor, and Cherry Valley Reservoirs.

(m) The Districts shall keep the District Engineer, Corps of Engineers, in charge of the locality, and the City currently advised of reservoir releases, reservoir storages, basic operating criteria which affect the schedule of operations, and such other operating data as the District Engineer, Corps of Engineers, may request for Don Pedro Reservoir.

(n) The flood-control regulations of this section are subject to temporary modification by the District Engineer, Corps of Engineers, if found necessary in time of flood emergency. Request for and action on such modifications may be made by any available means of communication, and such action shall be confirmed in writing under date of same day to the operating agency for the reservoir affected.

[21 FR 2682, Apr. 26, 1956]

PART 209—ADMINISTRATIVE PROCEDURE

Sec.

209.50 Mississippi River Commission: Public Observation of Commission Meetings.

209.110 Purpose.

Sec.

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209.320 Policy on release of commercial statistics.
209.325 Navigation lights, aids to navigation, navigation charts, and related data policy, practices and procedure.
209.330 U.S. Lake Survey Office.
209.335 Publication.
209.340 Laboratory investigations and materials testing.
209.345 Water resource policies and authorities.

AUTHORITY: R.S. 161; 5 U.S.C. 301, unless otherwise noted.

SOURCE: 33 FR 18670, Dec. 18, 1968, unless otherwise noted.

§ 209.50 Mississippi River Commission: Public Observation of Commission Meetings.

(a) *Purpose.* (1) The purpose of this regulation is to afford to the public, to the fullest possible extent, information regarding the decisionmaking processes of the Mississippi River Commission and to open all meetings of the Mississippi River Commission to public observation except in instances where a portion or portions of a meeting may be closed to the public in accordance with this regulation in order to protect the rights of individuals and/or in order to permit the Mississippi River Commission to carry out its statutory and assigned functions and responsibilities. This regulation is issued in accordance with section (g) of the Government in the Sunshine Act and implements sections (b) through (f) of said Act [5 U.S.C. 552b (b) through (f)].

(2) Public observation of Mississippi River Commission meetings includes public participation in the deliberations of the Commission only to the extent specifically provide in public notices of such meetings.

(b) *Definitions.* The following definitions apply to the regulation in this section.

(1) "Commission" means The Mississippi River Commission.

(2) "President" means the duly appointed President and Executive Officer of the Commission.

(3) "Commissioner" means a duly appointed member of the Commission.

(4) "Secretary" means the Secretary of the Commission.

(5) "Chief Legal Officer" means the Division Counsel or the acting Division Counsel of the Lower Mississippi Valley Division, Corps of Engineers.

(6) "Meeting" means the deliberations of at least a majority of the Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include:

(i) Deliberations of the Commission in determining whether or not to close a portion or portions of a meeting in accordance with paragraphs (e)(4) and (e)(5) of this section.

(ii) Deliberations of the Commission in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting as provided in paragraphs (e)(4) and (e)(5) of this section.

(iii) Deliberations of the Commission pertaining to changes in the subject matter of a meeting or changes in the determination to open or close a por-

tion or portions of a meeting to the public following the public announcement of such meeting in accordance with paragraph (d)(4) of this section.

(iv) Deliberations of the Commission in determining whether to waive the one-week public notice requirement in accordance with paragraph (d)(2) of this section.

(c) *Time, place, and agenda of meetings.* (1) The meetings of the Commission, except those held on Government boats during inspection trips of the Commission, shall be held at Vicksburg, Mississippi. The time of such meetings shall be fixed by the President of the Commission, who shall cause due notice of such meetings to be given members of the Commission and the public.

(33 U.S.C. 646)

(2) The President shall, after consultation with the Commissioners, prepare a detailed agenda for planned Commission meetings at the earliest practicable time. Suggestions from the public of proposed agenda items are invited.

(d) *Public notices and Federal Register publication.* (1) At least one week before each Commission meeting the Secretary shall issue a public announcement which (i) States the time and place of the meeting,

(ii) Lists the agenda items or subjects to be discussed at the meeting,

(iii) States whether the meeting or portions of the meeting are to be closed or open to public observation,

(iv) States whether or not public participation in the meeting will be permitted, and

(v) States the name and business phone number of the official who will respond to requests for information about the meeting. Public announcements of Commission meetings shall include releases to the news media in the Lower Mississippi River Valley and mailing notices of such meetings to all persons and agencies known to have an interest in the Commission's work and to others who request such announcements.

(2) The one-week period for public notice required by paragraph (d)(1) of this section shall not be applicable when a majority of the entire membership of the Commission determines by a recorded vote that Commission business requires that a meeting be called at an earlier date. The Secretary shall, however, issue the public notice required by paragraph (d)(1) of this section at the earliest practicable time.

(3) When due to unforeseen circumstances it is necessary to change the time or place of a meeting following the public announcement required by paragraph (d)(1) of this section, the Secretary will publicly announce such change at the earliest practicable time.

(4) The subject matter of a meeting, or the determination of the Commission to open or close a portion or portions of a meeting to the public, may be changed following the public announcement required by paragraph (d)(1) of this section only if: (i) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (ii) the Secretary publicly announces such change and the vote of each member on such change at the earliest practicable time.

(5) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether a portion or portions of the meetings are open or closed to public observation, any change in one of the preceding, and the name and business telephone number of the official of the Commission who will respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

(e) *Closing a portion or portions of a meeting.* (1) All Commission meetings shall be open to the public except when the Commission determines that public disclosure of information to be discussed in a portion or portions of a meeting is likely to:

(i) Disclose matters that are (A) specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(ii) Relate solely to the internal personnel rules and practices of the Commission;

(iii) Disclose matters specifically exempted from disclosure by statute [other than the Freedom of Information Act (5 U.S.C. 552), provided that such statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Involve accusing any person of a crime, or formally censuring any person;

(vi) Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(vii) Disclose investigatory records compiled for law-enforcement purposes, or information which, if written, would be contained in such records. But only to the extent that the production of such records or information would: (A) Interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or to an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, or (D) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law-enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national-security intelligence investigation, confidential information furnished only by the confidential source;

(viii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action except: (A) When the Commission has already disclosed to the public the content or nature of its proposed action or (B) when the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal;

(ix) Specifically concerns the Commission's participation in a civil action or proceeding.

(2) In each instance where the Commission determines that a portion or portions of a meeting may be closed to the public, or determines that information may be withheld from the public for one or more of the exemptions listed in paragraph (e)(1) of this section, the Commission shall consider and determine whether or not the public interest requires that the portion or portions of the meeting be open to the public and whether or not the public interest requires that the information be released to the public.

(3) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (e)(1)(v), (vi) or (vii) of this section, the Commission, upon the request of any one of its members, shall vote by recorded vote whether to close such meeting.

(4) Action to close a portion or portions of a meeting for one or more of the reasons listed in paragraphs (e)(1)(i) through (ix) of this section, or to withhold information from the public for one or more of the reasons listed in paragraphs (e)(1)(i) through (ix) of this section shall be taken only when a majority of the entire membership of the Commission votes to take such action.

(5) A separate recorded vote of the Commission shall be taken with respect to each meeting a portion or portions of which the Commission proposes to close to the public, and a separate vote of the members of the Commission shall be taken to determine whether to withhold information from the public. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(6) Within one day of any vote taken pursuant to paragraphs (e)(4) and (e)(5) of this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion or portions of a meeting are to be closed to the public, the Commission shall within one day of the vote

taken pursuant to paragraphs (e)(4) and (e)(5) of this section make publicly available a written explanation of its action in closing a portion or portions of the meeting together with a list of all persons expected to attend the meeting and their affiliations.

(7) For every portion or portions of a meeting closed pursuant to paragraphs (e)(1)(i) through (ix) of this section, the Chief Legal Officer of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained in the Commission files.

(f) *Records.* (1) The Secretary shall maintain in the official files:

(i) A complete transcript or electronic recording (disclosing the identity of each speaker) adequate to record fully the proceedings of the Commission at a portion or portions of a meeting closed to the public for the reasons specified in paragraphs (e)(1)(i) through (ix) of this section.

(ii) The statement of the presiding officer of each Commission meeting, a portion or portions of which were closed to the public, as required by paragraph (e)(7) of this section.

(iii) The certification of the Chief Legal Officer, as required by paragraph (e)(7) of this section, for each Commission meeting, a portion or portions of which were closed to the public.

(2) The records required by paragraph (f)(1) of this section shall be retained for at least two years following any meeting or not less than one year following conclusion of Commission action with respect to any matter discussed at such meeting, whichever occurs later.

(g) *Public access to records.* (1) All records required to be maintained in accordance with the provisions of (f)(1) of this section shall promptly be made available to the public by the Secretary except for information which the Commission has determined may be withheld from the public for the reasons stated in paragraphs (e)(1)(i) through (ix) of this section.

(2) Public inspection of such records shall take place at the headquarters of the Mississippi River Commission, 1400 Walnut Street, Vicksburg, Mississippi 39180.

(3) The Secretary shall provide (subject to withholding of information for the reasons stated in paragraphs (e)(1)(i) through (ix) of this section) upon request of any person, copies of the records required by the provisions of (f)(1) of this section, including transcriptions of electronic recordings at the actual cost of transcription or duplication.

(5 U.S.C. 552b)

[42 FR 13286, Mar. 10, 1977]

§ 209.110 Purpose.

Sections 209.120 to 209.335 state the general course and method by which the functions of the Corps of Engineers are channeled and determined, including the nature and requirements of all procedures as well as forms and instructions. They are intended to show what the Department requires and how the Department acts in a given type of case.

§ 209.132 Permits for work in navigable waters relating to the trans-Alaska pipeline.

(a) As required by section 203(b) of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93-153), permits for work or structures in navigable waters necessary for or related to construction of the Trans-Alaska Oil Pipeline System shall be issued in accordance with 33 CFR 209.120, *Permits for work in navigable waters or ocean waters: Provided, however,* That:

(1) Applications for such permits shall be processed in accordance with the standard procedures set forth in § 209.120, except that:

(i) As provided by section 203(d) of the Trans-Alaska Pipeline Authorization Act, no further action under the National Environmental Policy Act is required prior to the issuance of such permits;

(ii) In view of the Secretary of the Interior's responsibility under section 28 of the Mineral Leasing Act of 1920,

as amended, in approving the right-of-way for the pipeline system to impose requirements relating to pipeline safety and environmental protection, the review of permit applications subject to this section shall be limited to the impact which the physical presence of the pipeline and its appurtenant structures will have on navigation and on the navigable capacity of the waterway;

(iii) The public notice of applications for such permits will contain the following statement: "The review and ultimate imposition of terms and conditions in the permit will be based solely upon an evaluation of the effect which the physical presence of the pipeline and its appurtenant structures will have on navigation"; and

(iv) Public meetings will be held by the Corps of Engineers in connection with such permit applications only when in the District Engineer's judgment opponents have a reasonable complaint based on interference with navigation or navigable capacity.

(2) Any permits issued hereunder shall include whatever terms and conditions are found to be necessary as a result of the review provided for in paragraph (a)(1) of this section.

(b) Applications involving the Trans-Alaska Oil Pipeline System for the discharge of dredged or fill material in navigable waters or the transportation of dredged material for disposal in ocean waters will be processed in accordance with the policy, practice and procedures expressed in 33 CFR 209.120, *Permits for work in navigable waters or ocean waters: Provided, however,* That pursuant to section 203(d) of the Trans-Alaska Pipeline Authorization Act, no further action under the National Environmental Policy Act is required prior to the issuance of such permits.

[39 FR 12256, Apr. 4, 1974]

§ 209.135 Shipping safety fairways and anchorage areas, Gulf of Mexico.

(a) *Purpose.* Fairways and anchorage areas as described in this section are established to control the erection of structures therein to provide safe approaches through oil fields in the Gulf of Mexico to entrances to the major ports along the Gulf Coast.

(b) Permits. (1) Department of the Army permits are required pursuant to law (30 Stat. 1151; 33 U.S.C. 403) and (92 Stat. 635; 43 U.S.C. 1333(e)) for work or structures in the Gulf of Mexico in coastal waters and the waters covering the Outer Continental Shelf. The Department of the Army will grant no permits for the erection of structures in the area designated as fairways, since structures located therein would constitute obstructions to navigation. Exception: The temporary placement of anchors may be allowed by these regulations.

(2) The Department of the Army may permit temporary anchors and attendant cables or chains for floating or semisubmersible drilling rigs to be placed within a fairway provided the following conditions are met.

(i) The installation of anchors to stabilize semisubmersible drilling rigs within fairways must be temporary and shall be allowed to remain only 120 days. This period may be extended by the district engineer provided reasonable cause for such extension can be shown and the extension is otherwise justified.

(ii) Drilling rigs must be at least 500 feet from any fairway boundary or whatever distance necessary to insure that minimum clearance over an anchor line within a fairway will be 125 feet.

(iii) No anchor buoys or floats or related rigging will be allowed on the surface of the water or to a depth of 125 feet from the surface, within the fairway.

(iv) Drilling rigs may not be placed closer than 2 nautical miles of any other drilling rig situated along a fairway boundary, and not closer than 3 nautical miles to any drilling rig located on the opposite side of the fairway.

(v) The permittee must notify the District Engineer, U.S. Geological Survey, Bureau of Land Management, U.S. Coast Guard, National Oceanic and Atmospheric Administration and the Defense Mapping Agency Hydrographic Center of the approximate dates (commencement and completion) the anchors will be in place to insure maximum notification of mariners.

(vi) Navigation aids or danger markings must be installed as required by the U.S. Coast Guard.

(3) The Department of the Army may grant permits for the erection of structures within an area designated as an anchorage area, but the number of structures will be limited by spacing, as follows: The center of a structure to be erected shall be not less than two (2) nautical miles from the center of any existing structure. In a drilling or production complex, associated structures shall be as close together as practicable having due consideration for the safety factors involved. A complex of associated structures, when connected by walkways, shall be considered one structure for the purposes of spacing. A vessel fixed in place by moorings and used in conjunction with the associated structures of a drilling or production complex, shall be considered an attendant vessel and its extent shall include its moorings. When a drilling or production complex includes an attendant vessel and the complex extends more than five hundred (500) yards from the center of the complex, a structure to be erected shall be not closer than two (2) nautical miles from the near outer limit of the complex. An underwater completion installation in an anchorage area shall be considered a structure and shall be marked with a lighted buoy as approved by the United States Coast Guard.

(c) *Modification of the areas.* The fairways and anchorage areas are subject to modification but only after due notification and consideration of the views of interested parties, and advance publication of any adverse determination (see § 209.335 for notice of proposed rule making).

(d) *The areas.*

(1) *Brazos Santiago Pass Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
26°03'27"	97°08'36"
26°02'57"	97°07'11"
26°02'06"	96°57'24"
25°58'54"	96°19'00"

and rhumb lines joining points at:

Latitude	Longitude
26°04'27"	97°08'36"
26°04'58"	97°07'07"
26°04'12"	96°59'30"
26°04'00"	96°57'24"
26°00'54"	96°19'00"

(2) *Brazos Santiago Pass Anchorage Areas.* The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
26°02'57"	97°07'11"
26°02'06"	96°57'24"
25°58'54"	96°57'24"
25°58'54"	97°07'18"
26°02'57"	97°07'11"

and rhumb lines joining points at:

Latitude	Longitude
26°04'58"	97°07'07"
26°09'00"	97°07'00"
26°09'00"	96°59'30"
26°04'12"	96°59'30"
26°04'58"	97°07'07"

(3) *Port Mansfield Safety Fairway.* The areas between rhumb line joining points at:

Latitude	Longitude
26°33'39"	97°16'04"
26°33'43"	97°14'38"

and rhumb lines joining points at:

Latitude	Longitude
26°34'04"	97°16'05"
26°34'40"	97°15'47"
26°34'43"	97°14'40"
26°22'16"	96°17'40"

(4) *Aransas Pass Safety Fairway.* The area betwen rhumb lines joining points at:

Latitude	Longitude
27°49'21"	97°02'08"
27°48'11"	97°01'06"
27°46'26"	96°57'40"
27°45'14"	96°55'26"
27°44'09"	96°53'25"
27°42'47"	96°51'39"
27°39'24"	96°48'26"
27°21'59"	96°11'42"

and rhumb lines joining points at:

Latitude	Longitude
27°50'15"	97°01'32"
27°49'54"	96°59'56"
27°45'22"	96°51'19"
27°44'35"	96°48'31"
27°43'49"	96°45'47"
27°35'17"	96°27'46"
27°33'33"	96°24'06"
27°25'53"	96°07'56"

separated by areas enclosed by rhumb lines joining points at:

Latitude	Longitude
27°41'10"	96°47'23"
27°34'50"	96°34'01"
27°34'59"	96°31'56"
27°42'03"	96°46'51"
27°41'10"	96°47'23"

and rhumb lines joining points at:

Latitude	Longitude
27°33'06"	96°30'21"
27°23'33"	96°10'12"
27°24'19"	96°09'26"
27°33'15"	96°28'16"
27°33'06"	96°30'21"

(5) *Aransas Pass Anchorage Areas.* The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
27°49'54"	96°59'56"
27°45'22"	96°51'19"
27°51'46"	96°40'12"
27°53'36"	96°56'30"
27°49'54"	96°59'56"

and rhumb lines joining points at:

Latitude	Longitude
27°45'14"	96°55'26"
27°43'00"	96°55'27"
27°44'09"	96°53'25"
27°45'14"	96°55'26"

(6) *Matagorda Entrance Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°24'50"	96°19'38"
28°22'16"	96°17'40"
28°14'48"	96°09'42"
28°11'24"	96°06'06"
28°10'06"	96°04'42"
27°38'19"	95°49'48"

and rhumb lines joining points at:

Latitude	Longitude
28°25'31"	96°18'48"
28°23'38"	96°16'00"
28°16'12"	96°08'06"
28°12'30"	96°04'12"
28°11'13"	96°02'46"
27°38'12"	95°47'19"

(7) *Matagorda Entrance Anchorage Areas.* The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
28°22'16"	96°17'40"
28°14'48"	96°09'42"
28°12'42"	96°12'12"
28°20'12"	96°20'12"

and rhumb lines joining points at:

Latitude	Longitude
28°23'38"	96°16'00"
28°25'36"	96°13'36"
28°18'12"	96°05'36"
28°16'12"	96°08'06"
28°23'38"	96°16'00"

(8) *Freeport Harbor Safety Fairway.* The area between rhumb lines joining points at:

Latitude	Longitude
28°55'19"	95°17'46"
28°52'58"	95°16'06"
28°44'52"	95°07'43"
28°43'32"	95°06'18"
28°04'48"	94°26'12"

and rhumb lines joining points at:

Latitude	Longitude
28°55'59"	95°16'55"
28°54'05"	95°14'10"
28°45'58"	95°05'48"
28°44'39"	95°04'22"
28°07'46"	94°26'12"

(9) *Freeport Harbor Anchorage Areas.* The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
28°52'59"	95°16'06"
28°44'52"	95°07'43"
28°42'24"	95°12'00"
28°51'30"	95°18'42"
28°52'58"	95°16'06"

and rhumb lines joining points at:

Latitude	Longitude
28°54'05"	95°14'10"
28°56'54"	95°09'18"
28°47'42"	95°02'42"
28°45'58"	95°05'48"
28°54'05"	95°14'10"

(10) *Galveston Entrance Safety Fairways.* The areas between rhumb lines joining points at:

Latitude	Longitude
27°44'03"	94°26'12"
28°04'48"	94°26'12"
28°07'46"	94°26'12"
29°06'24"	94°26'12"
29°07'42"	94°27'48"
29°18'10"	94°39'16"
29°19'39"	94°41'33"
29°20'44"	94°40'44"
29°19'23"	94°37'08"
29°10'30"	94°22'54"
29°10'17"	94°22'30"
29°09'06"	94°20'36"
28°17'17"	92°57'59"

and rhumb lines joining points at:

Latitude	Longitude
27°44'13"	94°23'57"
29°06'24"	94°23'55"
29°07'41"	94°22'23"
28°11'57"	92°53'25"

(11) *Galveston Entrance Anchorage Areas.* The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
29°18'10"	94°39'16"
29°08'04"	94°28'12"
29°03'13"	94°36'48"
29°14'48"	94°45'12"
29°18'10"	94°39'16"

and rhumb lines joining points at:

Latitude	Longitude
29°19'23"	94°37'08"
29°22'18"	94°32'00"
29°14'23"	94°25'53"
29°13'24"	94°27'33"
29°19'23"	94°37'08"

(12) *Sabine Pass Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
29°38'25"	93°50'02"
29°35'19"	93°49'10"
29°33'00"	93°46'26"
29°32'03"	93°46'44"
29°30'39"	93°43'41"
29°28'30"	93°41'09"
29°07'28"	93°41'08"
28°17'17"	92°57'59"
28°11'57"	92°53'25"
27°51'58"	92°36'20"

and rhumb lines joining points at:

Latitude	Longitude
29°38'48"	93°48'59"
29°37'32"	93°48'02"
29°36'28"	93°47'14"
29°32'52"	93°43'00"
29°31'13"	93°41'04"
29°29'20"	93°38'51"
29°08'08"	93°38'52"
28°39'02"	93°13'39"
28°36'15"	93°11'15"
27°52'09"	92°33'40"

(13) *Sabine Pass Anchorage Area.* The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
29°37'32"	93°48'02"
29°37'32"	93°21'25"
29°32'52"	93°43'00"
29°36'28"	93°47'14"
29°37'32"	93°48'02"

(14) *Coastwise Safety Fairways.* (i) *Brazos Santiago Pass to Aransas Pass.* The areas between rhumb lines joining points at:

Latitude	Longitude
26°04'12"	96°59'30"
26°09'00"	96°59'30"
27°46'26"	96°57'40"

and rhumb lines joining points at:

Latitude	Longitude
25°58'54"	96°57'24"
26°02'06"	96°57'24"
26°04'00"	96°57'24"
27°40'36"	96°55'30"
27°43'00"	96°55'27"
27°45'14"	96°55'26"

(ii) *Aransas Pass to Calcasieu Pass.* The areas between rhumb lines joining points at:

Latitude	Longitude
27°43'00"	96°55'27"
27°44'09"	96°53'25"
27°45'22"	96°51'19"
27°51'46"	96°40'12"
28°11'24"	96°06'06"
28°12'30"	96°04'12"
28°42'24"	95°12'00"
28°44'52"	95°07'43"
28°45'58"	95°05'48"
28°47'42"	95°02'42"
29°02'48"	94°36'30"
29°07'42"	94°27'48"
29°10'17"	94°22'30"
29°29'30"	93°58'24"
29°32'03"	93°46'44"
29°33'00"	93°46'26"
29°32'52"	93°43'00"
29°37'32"	93°21'25"

and rhumb lines joining points at:

Latitude	Longitude
27°40'36"	96°55'30"
27°42'47"	96°51'39"
27°44'35"	96°48'31"
28°10'06"	96°04'42"
28°11'13"	96°02'46"
28°43'32"	95°06'18"
28°44'39"	95°04'22"
29°06'24"	94°26'12"
29°06'24"	94°23'55"
29°07'41"	94°22'23"
29°09'06"	94°20'36"
29°27'40"	93°57'18"
29°30'39"	93°43'41"
29°31'13"	93°41'04"
29°33'56"	93°28'35"
29°32'57"	93°17'00"

(15) *Calcasieu Pass Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
29°45'00"	93°20'58"
29°40'56"	93°20'18"
29°38'18"	93°20'42"
29°37'32"	93°21'25"
29°32'57"	93°17'00"
29°31'08"	93°14'38"
28°39'02"	93°13'39"

and rhumb lines joining points at:

Latitude	Longitude
29°45'05"	93°20'03"
29°41'12"	93°19'37"
29°37'30"	93°18'15"
29°31'16"	93°12'16"
28°36'15"	93°11'15"

(16) *Calcasieu Pass Anchorage Area.* The areas enclosed by rhumb lines joining points at:

Latitude	Longitude
29°41'12"	93°19'37"
29°41'12"	93°12'28"
29°31'16"	93°12'16"
29°37'30"	93°18'15"
29°41'12"	93°19'37"

(17) [Reserved]

(18) *Freshwater Bayou Safety Fairway.* The area between lines joining points at:

Latitude	Longitude
29°31'59"	92°18'45"
29°31'10"	92°18'54"
29°31'13"	92°19'14"
29°27'44"	92°19'53"

and a line joining points at:

Latitude	Longitude
29°27'34"	92°18'45"
29°31'03"	92°18'06"
29°31'06"	92°18'26"
29°31'55"	92°18'17"

(19) *Southwest Pass Safety Fairway.* The area between lines joining points at:

Latitude	Longitude
29°34'48"	92°03'12"
29°30'48"	92°07'00"
29°23'30"	92°08'24"

and lines joining points at:

Latitude	Longitude
29°34'24"	92°02'24"
29°30'24"	92°06'12"
29°23'24"	92°07'30"

(20) *Atchafalaya Pass Safety Fairway.* The area between a line joining points at:

Latitude	Longitude
29°22'36"	91°23'28"
29°14'42"	91°30'28"

and a line joining points at:

Latitude	Longitude
29°14'05"	91°29'34"
29°21'59"	91°22'34"

(21) *Bayou Grand Caillou Safety Fairway.* The area between a line joining points at:

Latitude	Longitude
29°10'59"	90°57'26"
29°05'24"	90°58'10"
29°01'08"	91°00'44"

and a line joining points at:

Latitude	Longitude
29°00'40"	90°59'43"
29°05'06"	90°57'03"
29°09'46"	90°56'27"

(22) *Cat Island Pass Safety Fairway.* The area between lines joining points at:

Latitude	Longitude
29°05'57"	90°34'32"
29°04'56"	90°35'09"
29°03'14"	90°35'10"
29°03'14"	90°35'17"
29°01'24"	90°34'55"

and lines joining points at:

Latitude	Longitude
29°06'00"	90°34'21"
29°05'31"	90°34'12"
29°03'13"	90°34'13"
29°03'13"	90°34'07"
29°01'34"	90°33'47"

(23) *Belle Pass Safety Fairway.* The area between a line joining points at:

Latitude	Longitude
29°05'06"	90°14'07"
29°02'50"	90°14'46"

and a line joining points at:

Latitude	Longitude
29°02'56"	90°13'48"
29°05'06"	90°13'10"

(24) *Barataria Pass Safety Fairway.* The area between a line joining points at:

Latitude	Longitude
29°16'00"	89°57'00"
29°14'54"	89°55'48"

and a line joining points at:

Latitude	Longitude
29°16'30"	89°56'06"
29°15'18"	89°55'00"

(25) *Grand Bayou Pass Safety Fairway.* The areas between a line joining points at:

Latitude	Longitude
29°17'36"	89°41'36"
29°16'48"	89°42'12"

and a line joining points at:

Latitude	Longitude
29°17'18"	89°40'36"
29°16'18"	89°41'18"

(26) *Empire to the Gulf Safety Fairway.* The area between a line joining points at:

Latitude	Longitude
29°15'22"	89°36'55"
29°13'52"	89°37'15"

and a line joining points at:

Latitude	Longitude
29°13'24"	89°36'11"
29°14'54"	89°35'51"

(27) *Gulf Safety Fairway. Aransas Pass Safety Fairway to Southwest Pass Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
27°33'06"	96°30'21"
27°33'15"	96°28'16"
27°33'33"	96°24'06"
28°00'36"	90°08'18"

and rhumb lines joining points at:

Latitude	Longitude
27°34'50"	96°34'01"
27°34'59"	96°31'56"
27°35'17"	96°27'46"
27°38'02"	95°49'39"
27°38'12"	95°47'19"
27°44'03"	94°26'12"
27°44'13"	94°23'57"
27°51'58"	92°36'20"
27°52'09"	92°33'40"
28°02'32"	90°09'28"

(28) *Southwest Pass (Mississippi River) Safety Fairway.* (i) *Southwest Pass (Mississippi River) to Gulf Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°54'33"	89°26'07"
28°52'42"	89°27'06"
28°50'00"	89°27'06"
28°02'32"	90°09'28"

and rhumb lines joining points at:

East jetty light	
28°52'42"	89°24'48"
28°48'48"	89°24'48"
28°47'24"	89°26'30"
28°00'36"	90°08'18"

(ii) *Southwest Pass (Mississippi River) to Sea Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°54'33"	89°26'07"
28°52'42"	89°27'06"
28°50'00"	89°27'06"
28°47'24"	89°26'30"
28°36'28"	89°18'45"

and rhumb lines joining points at:

East jetty light	
28°52'42"	89°24'48"
28°48'48"	89°24'48"
28°45'06"	89°22'12"
28°43'27"	89°21'01"
East jetty light	
28°37'54"	89°17'06"

(iii) *Southwest Pass (Mississippi River) to South Pass (Mississippi River) Safety Fairway.* The areas between rhumb line joining points at:

Latitude	Longitude
28°45'06"	89°22'12"
28°55'56"	89°03'09"

and rhumb lines joining points at:

Latitude	Longitude
28°43'27"	89°21'01"
28°54'55"	89°00'44"

(29) *Southwest Pass (Mississippi River) Anchorage.* The areas between lines joining points at:

Latitude	Longitude
28°53'30"	89°25'18"
28°53'30"	89°21'48"
28°55'06"	89°21'48"
28°55'06"	89°19'18"
28°52'41"	89°17'30"
28°50'40"	89°21'14"
28°50'40"	89°24'48"
28°52'42"	89°24'48"
28°53'30"	89°25'18"

(30) *South Pass (Mississippi River) Safety Fairway.* (i) *South Pass to Sea Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°59'18"	89°08'30"
28°58'42"	89°07'30"
28°58'09"	89°08'30"
28°55'56"	89°03'09"
28°54'55"	89°00'44"
28°54'15"	88°59'00"

and rhumb lines joining points at:

East jetty light	
28°59'24"	89°08'12"
29°00'09"	89°07'24"
29°00'00"	89°07'00"
28°57'56"	89°02'18"
28°57'18"	89°00'48"
28°56'16"	88°58'29"

East jetty light	
28°55'42"	88°57'06"

(ii) *South Pass (Mississippi River) to Mississippi River-Gulf Outlet Channel Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
28°57'18"	89°00'48"
29°04'18"	88°48'31"
29°24'35"	88°57'17"

and rhumb lines joining points at:

Latitude	Longitude
28°56'16"	88°58'29"
29°03'30"	88°45'42"
29°23'06"	88°54'11"
29°26'28"	88°55'39"

(31) *South Pass (Mississippi River) Anchorage.* The areas within rhumb lines joining points at:

Latitude	Longitude
29°00'00"	89°07'00"
29°03'36"	89°02'18"
28°57'56"	89°02'18"

(32) *Mississippi River-Gulf Outlet Safety Fairway.* (i) The areas between rhumb lines joining points at:

Latitude	Longitude
29°42'10"	89°25'49"
29°29'33"	89°07'47"
29°27'14"	89°03'20"
29°24'38"	89°00'00"
29°24'35"	88°57'17"

and rhumb lines joining points at:

Latitude	Longitude
29°42'29"	89°25'31"
29°29'53"	89°07'31"
29°27'01"	89°01'54"
29°26'38"	88°58'43"

(ii) *Mississippi River-Gulf Outlet Channel to Mobile Ship Channel Safety Fairway.* The areas within rhumb lines joining points at:

Latitude	Longitude
29°26'38"	88°58'43"
29°29'57"	88°54'48"
29°38'59"	88°44'04"
29°56'43"	88°20'50"
29°58'03"	88°19'05"
30°05'29"	88°09'19"

and rhumb lines joining points at:

Latitude	Longitude
29°26'28"	88°55'39"
29°27'54"	88°53'54"
29°37'32"	88°42'28"
29°55'14"	88°19'15"
29°56'34"	88°17'30"
30°03'50"	88°08'01"
30°05'15"	88°06'05"

(33) *Mississippi River-Gulf Outlet Anchorage.* (i) The areas within rhumb lines joining points at:

Latitude	Longitude
29°27'01"	89°01'54"
29°32'12"	88°55'42"
29°29'57"	88°54'48"
29°26'38"	88°58'43"

(ii) The areas within rhumb lines joining points at:

Latitude	Longitude
29°26'28"	88°55'39"
29°27'54"	88°53'54"
29°24'33"	88°52'27"
29°23'06"	88°54'11"

(34) *Gulfport Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
30°20'54"	89°05'36"
30°13'56"	88°59'42"
30°11'09"	88°59'56"
30°06'45"	88°56'24"
30°05'42"	88°58'24"

and rhumb lines joining points at:

Latitude	Longitude
30°21'27"	89°04'38"
30°14'11"	88°58'29"
30°11'29"	88°58'45"
30°07'42"	88°55'37"

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(35) *Biloxi Safety Fairway.* The area between lines joining points at:

Latitude	Longitude
30°24'06"	88°50'57"
30°23'15"	88°50'22"
30°21'11"	88°47'36"
30°20'13"	88°47'04"
30°15'06"	88°47'06"
30°13'09"	88°47'46"
30°12'23"	88°49'02"

and lines joining points at:

Latitude	Longitude
30°24'27"	88°50'31"
30°23'57"	88°49'31"
30°21'42"	88°46'36"
30°20'25"	88°45'55"
30°14'57"	88°45'57"
30°12'56"	88°46'39"
30°12'00"	88°45'25"

(36) *Ship Island Pass to Horn Island Pass Safety Fairway.* The areas between rhumb line joining points at:

Latitude	Longitude
30°05'42"	88°56'24"
30°06'38"	88°31'26"

and rhumb line joining points at:

Latitude	Longitude
30°07'42"	88°55'37"
30°08'27"	88°36'57"

(37) *Pascagoula Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
30°20'46"	88°34'39"
30°20'21"	88°34'39"
30°17'00"	88°31'21"
30°12'59"	88°30'53"
30°11'50"	88°32'05"
30°08'27"	88°36'57"
30°06'38"	88°31'26"
29°56'43"	88°20'50"
29°55'14"	88°19'15"
29°20'00"	87°41'47"

and rhumb line joining points at:

Latitude	Longitude
30°20'30"	88°33'18"
30°18'39"	88°31'25"

and rhumb line joining points at:

Latitude	Longitude
30°20'26"	88°31'25"
30°18'39"	88°31'25"

and rhumb lines joining points at:

Latitude	Longitude
30°19'21"	88°30'12"
30°17'25"	88°30'12"
30°12'46"	88°29'42"
30°11'21"	88°31'00"
30°09'33"	88°29'48"
30°07'30"	88°29'09"
29°58'03"	88°19'05"
29°56'34"	88°17'30"
29°20'48"	87°39'31"

(38) *Horn Island Pass to Mobile Ship Channel Safety Fairway.* The areas between rhumb line joining points at:

Latitude	Longitude
30°09'33"	88°29'48"
30°07'15"	88°06'54"

and rhumb line joining points at:

Latitude	Longitude
30°07'30"	88°29'09"
30°05'29"	88°09'19"

(39) *Mobile Safety Fairway.* (i) *Mobile Ship Channel.* The areas between rhumb lines joining points at:

Latitude	Longitude
30°38'46"	88°03'24"
30°38'14"	88°02'42"
30°31'59"	88°02'00"
30°31'59"	88°04'59"

and rhumb lines joining points at:

Latitude	Longitude
30°31'00"	88°05'30"
30°31'00"	88°01'54"
30°26'55"	88°01'26"
30°16'35"	88°02'45"

Latitude	Longitude
30°14'09"	88°03'24"
30°10'36"	88°03'53"
30°07'15"	88°06'54"

and rhumb lines joining points at:

Latitude	Longitude
30°39'55"	88°01'15"
30°37'06"	88°01'23"
30°26'11"	88°00'11"
30°16'18"	88°01'35"
30°13'52"	88°01'12"
30°13'14"	88°01'12"
30°10'36"	88°01'35"
30°08'04"	88°00'36"

(ii) *Mobile Ship Channel to Sea Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
30°05'15"	88°01'13"
30°03'50"	88°00'00"
29°25'46"	87°29'13"

and rhumb line joining points at:

Latitude	Longitude
30°06'17"	87°59'15"
29°27'00"	87°27'18"

(iii) *Mobile to Pensacola Safety Fairway.* The areas between rhumb line joining points at:

Latitude	Longitude
30°08'04"	88°00'36"
30°14'20"	87°19'05"

and rhumb line joining points at:

Latitude	Longitude
30°06'17"	87°59'15"
30°12'31"	87°18'00"

(40) *Mobile Anchorage.* The areas within rhumb lines joining points at:

Latitude	Longitude
30°05'15"	88°06'05"
30°05'15"	88°01'13"
30°03'50"	88°00'00"
30°03'50"	88°08'01"

(41) *Pensacola Safety Fairway.* The areas between rhumb lines joining points at:

Latitude	Longitude
30°23'41"	87°14'34"
30°23'06"	87°13'53"
30°22'54"	87°13'53"
30°20'47"	87°15'45"

and rhumb lines joining points at:

Latitude	Longitude
30°18'43"	87°19'24"
30°15'57"	87°18'19"
30°14'20"	87°19'05"
30°12'31"	87°18'00"
30°10'03"	87°18'00"
29°37'00"	87°18'00"

and rhumb lines joining points at:

Latitude	Longitude
30°26'27"	87°08'28"
30°25'35"	87°10'30"

and rhumb lines joining points at:

Latitude	Longitude
30°24'36"	87°07'07"
30°22'57"	87°09'38"
30°22'36"	87°11'50"
30°19'21"	87°14'46"
30°19'52"	87°17'31"

and rhumb lines joining points at:

Latitude	Longitude
30°19'15"	87°17'37"
30°16'28"	87°16'32"
30°14'32"	87°16'06"
30°12'33"	87°15'43"
29°42'30"	87°15'43"

(42) *Pensacola Anchorage.* (i) The area within rhumb lines joining points at:

Latitude	Longitude
30°11'49"	87°22'41"
30°12'31"	87°18'00"
30°10'03"	87°18'00"

Latitude	Longitude
30°09'21"	87°22'41"

(ii) The area within rhumb lines joining points at:

Latitude	Longitude
30°16'28"	87°16'32"
30°17'14"	87°11'52"
30°15'14"	87°11'52"
30°14'32"	87°16'06"

(43) *Pensacola to Panama City Safety Fairway.* The area between rhumb lines joining points at:

Latitude	Longitude
30°14'32"	87°16'06"
30°15'14"	87°11'52"
30°18'45"	86°50'00"
30°18'00"	86°20'00"
29°51'30"	85°47'33"

and rhumb lines joining points at:

Latitude	Longitude
30°12'33"	87°15'43"
30°16'44"	86°49'49"
30°16'01"	86°20'57"
29°48'45"	85°47'33"

(44) *Panama City Safety Fairways.* The areas between rhumb lines joining points at:

Latitude	Longitude
30°09'24"	85°40'12"
30°09'21"	85°41'40"
30°06'32"	85°47'33"
29°51'30"	85°47'33"
30°07'30"	85°44'20"
30°06'59"	85°46'12"
29°48'45"	85°47'33"
29°03'30"	85°47'33"

and rhumb lines joining points at:

Latitude	Longitude
30°08'34"	85°40'16"
30°07'55"	85°41'50"
30°06'49"	85°43'28"
30°05'16"	85°44'45"
30°04'40"	85°45'15"
29°55'27"	85°45'15"
29°51'20"	85°45'15"
29°49'19"	85°45'15"
29°00'00"	85°45'15"

(45) *Panama City Anchorage.* The area within rhumb lines joining points at:

Latitude	Longitude
29°55'27"	85°45'15"
29°55'27"	85°42'25"
29°51'39"	85°42'25"
29°51'20"	85°45'15"

(46) *Port St. Joe Fairway to Panama City Fairway.* The area between rhumb lines joining points at:

Latitude	Longitude
29°49'54"	85°19'24"
29°50'59"	85°22'25"
29°53'32"	85°22'25"
29°54'12"	85°24'00"
29°54'12"	85°25'55"
29°52'58"	85°28'43"
29°53'00"	85°29'48"
29°51'39"	85°42'25"
29°51'20"	85°45'15"

and rhumb lines joining points at:

Latitude	Longitude
29°48'22"	85°18'12"
29°47'21"	85°21'00"
29°50'42"	85°23'31"
29°52'51"	85°23'36"
29°53'10"	85°24'18"
29°53'10"	85°25'33"
29°51'57"	85°28'19"
29°51'04"	85°29'00"
29°50'40"	85°32'39"
29°49'19"	85°45'15"

(47) *Port St. Joe Anchorage.* The area within rhumb lines joining points at:

Latitude	Longitude
29°50'40"	85°32'39"
29°51'04"	85°29'00"
29°49'18"	85°30'18"

(48) *Tampa Safety Fairways.* The area between rhumb lines joining points at:

Latitude	Longitude
27°37'48"	82°45'54"
27°36'48"	82°55'54"
27°36'48"	83°00'00"
27°36'48"	84°39'10"

and rhumb lines joining points at:

Latitude	Longitude
27°35'54"	82°45'42"
27°34'48"	82°55'54"
27°34'48"	83°00'00"
27°34'48"	84°39'00"

(49) *Tampa Anchorages.* (i) The area within rhumb lines joining points at:

Latitude	Longitude
27°36'48"	83°00'00"
27°39'00"	83°00'00"
27°39'00"	82°55'54"
27°36'48"	32°55'54"

(ii) The area within rhumb lines joining points at:

Latitude	Longitude
27°34'48"	83°00'00"
27°33'00"	83°00'00"
27°33'00"	82°55'54"
27°34'48"	82°55'54"

(50) *Charlotte Safety Fairways.* The area between rhumb lines joining points at:

Latitude	Longitude
26°41'18"	82°19'00"
25°30'00"	84°22'00"

and rhumb lines joining points at:

Latitude	Longitude
26°40'19"	82°18'28"
26°38'30"	82°19'54"
26°39'00"	82°19'00"
25°28'00"	84°21'30"

(51) *Charlotte Anchorage.* The area within rhumb lines joining points at:

Latitude	Longitude
26°39'00"	82°19'00"
26°38'12"	82°18'24"
26°37'36"	82°19'18"
26°38'30"	82°19'54"

(Sec. 10, 30 Stat. 1151, Sec. 4, 67 Stat. 462; 33 U.S.C. 403, 43 U.S.C. 1333(f); 30 Stat. 1151, 33 U.S.C. 403, and 92 Stat. 635; 43 U.S.C. 1333(e))

[33 FR 18670, Dec. 18, 1968, as amended at 41 FR 5391, Feb. 6, 1976; 41 FR 9339, Mar. 4, 1976; 41 FR 30329, July 23, 1976; 41 FR 31820, July 30, 1976; 44 FR 54047, Sept. 18, 1979; 44 FR 55865, Sept. 28, 1979; 46 FR 11660, Feb. 10, 1981; 46 FR 53408, Oct. 29, 1981]

§ 209.138 Shipping Safety Fairway in the Pacific Ocean at Port Hueneme, Calif.

(a) *Purpose.* The fairway area as described in this section is established to control the erection of structures therein to provide a safe approach to the entrance to Port Hueneme.

(b) *Permits.* Department of the Army permits are required pursuant to law (30 Stat. 1151; 33 U.S.C. 403) and (67 Stat. 462; 43 U.S.C. 1333(f)) for work or structures in the Pacific Ocean in coastal waters and the waters covering the Outer Continental Shelf. The Department of the Army will grant no permits for the erection of structures in the fairway area, since structures located therein would constitute obstructions to navigation.

(c) *Modification of the area.* The fairway is subject to modification, but only after due notification and consideration of the views of interested parties, and advance publication of any adverse determination (see § 209.520 of this part for notice of proposed rule making).

(d) *The fairway.* An area one nautical mile in width centered on the alinement of Port Hueneme Entrance Channel and extending seaward from the 30-foot-depth curve for a distance of 1.5 nautical miles, thence turning southerly and widening to 1.5 nautical miles at the 3-mile limit, all between lines joining the following points:

Point	Latitude	Longitude
A	34°06'30"	119°15'00"
B	34°07'37"	119°14'25"
C	34°08'49"	119°13'21"

thence generally along the 30-foot-depth curve to the seaward end of the west entrance jetty; seaward end of the east entrance jetty, thence generally along the 30-foot-depth curve to:

Point	Latitude	Longitude
F	34°08'21"	119°12'15"
G	34°07'10"	119°13'20"
H	34°05'48"	119°13'23"

(Sec. 10, 30 Stat. 1151. Sec. 4, 67 Stat. 462; 33 U.S.C. 403, 43 U.S.C. 1333(f))

§ 209.138a Authorization for exploratory drilling in the Gulf of Santa Catalina, Calif.

(a) Department of the Army authorization is required pursuant to section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 462; 43 U.S.C. 1333(f)) in coastal waters and the water covering the Outer Continental Shelf. The determination whether or not to issue a Department of the Army authorization for structures on the Outer Continental Shelf related to exploration of minerals is based upon the proposed activities' effect on navigation and national security. All other matters concerning offshore drilling, including environmental considerations, are the responsibility of the Department of the Interior.

(b) The following rules have been developed jointly by the Los Angeles district engineer and the 11th Coast Guard District, in consultation with the Bureau of Land Management and the U.S. Geological Survey for drilling in the Gulf of Santa Catalina:

(1) All drilling with a single tract will be covered by a single application.

(2) Where practicable, applications shall be submitted at least 120 days in advance of drilling for tracts where drilling is expected to be accomplished within the traffic separation scheme, the precautionary zone or within 2 nautical miles of a traffic lane.

(3) Applications shall include the location of any known proposed drilling site and the estimated start and completion dates for each. Updated information on the plan shall be furnished as soon as available. One individual (and alternate) shall be designated by the applicant as responsible for maintaining close liaison with all involved agencies.

(4) Where it is not feasible to perform exploratory work from outside the traffic lanes or ¼ mile buffer zones, or precautionary zone, authorizations will include the following conditions:

(i) Exploratory vessels within a traffic lane will, to the degree practicable, be sited near traffic lane boundaries.

(ii) Exploratory vessels within one traffic lane, or in the precautionary zone, shall be separated by at least 8 nautical miles in the direction of the lane axis.

(iii) Exploratory vessels located within the traffic lanes, or the precautionary zone, shall not have their pendant buoys within 3,000 yards from the pendant buoys of any other vessel.

(iv) Exploratory rigs and vessels engaged in offshore development may have no cables, anchors, buoys, or other associated equipment within the traffic lanes, ¼ mile buffer zones, or the precautionary zone, at a depth of less than 100 feet, unless such equipment is marked with class I private aids to navigation in accordance with current Federal regulations.

(67 Stat. 462 (43 U.S.C. 1333(f))

[43 FR 28475, June 30, 1978]

§ 209.140 Operations of the Corps of Engineers under the Federal Power Act.

(a) *General.* This section outlines policies and procedures applicable to those operations in which the Corps of Engineers may be called upon to participate under the Federal Power Act. Such operations include: Investigations and reports on applications for permits and licenses for development of power affecting navigable waters; supervision of investigations, construction, and operation of projects under such permits and licenses; preparation of special reports as required by the Federal Power Commission; and review of plans of dams or other structures affecting navigation. The foregoing functions are performed by the Corps of Engineers only upon request of the Federal Power Commission.

(b) *Authority of Division and District Engineers.* Section 2 of the revised Federal Power Act provides that the Federal Power Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United

States Army, to serve the Commission as Engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the Commission. By authority of the Secretary of the Army, and in accordance with the instructions issued by the President in a letter to the Secretary of the Army dated May 18, 1931, Division Engineers will be detailed to serve the Commission as engineer officers in field work outside the seat of government, their duties to be prescribed by the Commission, and to be performed under the supervision of the Chief of Engineers. District Engineers will be designated to carry out the field inspections and investigations under supervision of the Division Engineer. When a Division Engineer is detailed by the Chief of Engineers to assist the Commission in either the investigation or supervision of a project he will be the accredited representative of the Commission. The actual field work will be done by the designated District Engineer who will make a report to the Division Engineer. All reports and such correspondence as would normally be forwarded to the Commission will be addressed to the Chief of Engineers.

(c) *Procedure for investigations and report on applications for permits and licenses.* (1) Upon request by the Federal Power Commission, the Chief of Engineers will assign the investigation of an application for permit or license under the Federal Power Act to a Division Engineer, who will submit a report on the investigation as provided herein. The date that the report is to be submitted will be specified. The Division Engineer, upon assignment of an investigation involving extensive studies, will when requested by the Chief of Engineers submit an estimate of the cost of the investigation, listing the probable expenditures for salaries separate from the estimated costs of non-personal services.

(2) If in the investigation of an application or a declaration of intention filed under the Federal Power Act the Division Engineer considers a public hearing desirable in the interests of navigation or flood control, the Chief of Engineers will be notified whereupon the matter will be brought to the attention of the Commission. No public hearing will be held unless specifically authorized by the Commission or by the Chief of Engineers. If a hearing is authorized it will be limited strictly to consideration of the purpose for which approval is granted.

(3) The report will describe and discuss material facts having a definite bearing on the interests of navigation and flood control and the general effect the project would have on a comprehensive plan of developing the water resources of the basin. Specific reference will be made to pertinent published documents containing the results of studies and/or resolutions directing studies to be made. In the case of an application for permit or license for an unconstructed project the report will include a recommendation as to whether development should be undertaken by the United States rather than by a licensee. A recommendation for Federal development will be supported by a showing as to how this would serve the Corps of Engineers programs and policies. In the case of an application for permit or license for a constructed project the report should contain appropriate comments concerning possible redevelopment to improve the usefulness of the project in relation to the objectives of the Corps program in the basin.

(4) The report on an application for license will contain recommendations of the Division Engineer concerning the inclusion in the license of any terms and conditions that are considered to be necessary or desirable in the public interest from the standpoint of Corps of Engineers responsibilities.

(5) The report on an application for permit will contain such recommendations as required to insure coordination of the applicant's studies with the Division or District Engineer in cases where interests of the Corps of Engineers are involved. In all cases, the report will contain, in lieu of specific recommendations, a discussion of interests which should be protected by articles in a license issued subsequent to the permit period.

(6) If the project is on a Federal reservation or contemplates the use of a dam, either of which is under the ju-

risdiction of the Department of the Army, the report should state, giving reasons:

(i) Whether the project will interfere or be inconsistent with the purpose for which such reservation was created or acquired and what conditions, if any, should be imposed for the adequate protection and utilization of the reservation.

(ii) Whether the dam may be advantageously used by the United States for public purposes in addition to authorized purposes and whether it should be reserved for such use.

(iii) Whether the development should be undertaken by the United States.

(7) The reports will not be released or made public except by specific authority of the Chief of Engineers, nor will copies of a report, its findings, or recommendations be furnished to the applicant, to interested parties, or to the Commission until released by the Chief of Engineers.

(d) *Procedure for supervision of operations under permits and licenses.* (1) When supervision of the operations of an applicant under a permit or a license is requested by the Federal Power Commission, the Chief of Engineers will assign responsibility for supervision to the Division Engineer. The operations to be supervised, such as investigations being conducted by a permittee, construction of a project under a license or operation of completed projects, will be as specified by the Commission.

(2) Projects will be classified as major, minor, minor part or transmission line projects as indicated in the Federal Power Act and as specified in the instructions from the Commission.

(3) Inspection during the construction of a major project will be made monthly, or as often as may be necessary for the Division Engineer to assure himself that the terms of the license are being complied with and the work is of acceptable quality and in accordance with the approved plans. The frequency of inspections of minor, minor part, and transmission line projects is left to the discretion of the Division Engineer.

(4) After a project has been completed and placed in operation and is under the supervision of the Division Engineer, annual inspection will be made of major and minor projects but inspection of transmission line projects will not be made unless specifically requested by the Commission.

(5) Reports on supervision and inspections of operations under Federal Power Commission permits and licenses will be submitted in accordance with instructions in paragraph (e) of this section.

(e) *Reports on Supervision and Inspection of Operations under Federal Power Commission Permits Licenses.* Periodic reports, as appropriate to assigned responsibilities and as described in paragraphs (e) (1) through (3), inclusive, of this paragraph, will be submitted for each Federal Power Commission permit or license for which a Division Engineer has been assigned responsibility for supervision of operations under provisions of the Federal Power Act. All of the described reports will be submitted in triplicate to the Chief of Engineers for transmittal to the Federal Power Commission. Unless otherwise stated transmittal letters will not be required and the reports will be mailed so as to reach the Chief of Engineers not later than the 15th of the month following the end of the report period.

(1) *Reports on Supervision of Construction under a FPC License.* When a Division Engineer is assigned responsibility for supervision and inspection of construction of a licensed project, the requirements for submission of reports will be specified.

(2) *Annual Report on Operation of Project under Supervision of the Division Engineer.* Reports on the operation and maintenance of each major and minor licensed project for which supervision of operations has been assigned to a Division Engineer will be submitted annually after the initial installation covered by the license has been completed. Such reports will be made on Federal Power Commission Form 10, "Operation Report" and, pursuant to paragraph 39u of AR 335-15, do not require a reports control symbol. A special report will be made in case of severe flood or interruption in operation due to failure of material or accident. Reports on operation and

maintenance of transmission line projects are not required unless requested by the Commission.

(3) *Annual Report on Operation of Projects with Licenses Containing Conditions Prescribed in the Interest of Navigation.* When the Federal Power Commission notifies the Chief of Engineers that it will assume the supervision of operation of a licensed project, the Division Engineer will not be required to make detailed inspections and reports. However, the Division Engineer will continue to be responsible for the project insofar as it affects the interest of navigation. The inspection of projects in this class is left to the discretion of the Division Engineer but annual reports will be submitted in triplicate, through the Chief of Engineers, on Federal Power Commission Form 10, "Operation Report", omitting the items under "Supervision expense for period", but including the following information only under "Memorandum Report".

(i) Whether the operation of the project has been satisfactory insofar as the interests of navigation are concerned.

(ii) Whether any infraction by the licensee of the conditions in the interest of navigation has come to the attention of the Division Engineer.

(f) *Delegation of authority for approval of structural plans for non-Federal hydroelectric projects affecting navigation.* The authority vested in the Secretary of the Army by section 4(e) of the Federal Power Act is hereby delegated to the Chief of the Engineers for promulgation with regard to approval of plans of structures filed with the Federal Power Commission in connection with licensing of non-Federal hydroelectric projects.

(Sec. 4(e), 49 Stat. 840; 16 U.S.C. 797(e); Secretary of the Army memorandum for the Chief of Engineers, dated March 11, 1975)

[33 FR 18670, Dec. 18, 1968, as amended at 40 FR 17023, Apr. 16, 1975]

CROSS REFERENCE: For regulations of the Federal Energy Regulatory Commission, see 18 CFR Chapter I.

§ 209.141 Coordination of hydroelectric power operations with power marketing agencies.

(a) *Purpose.* This regulation establishes policies and procedures for coordinating the operation of the Corps of Engineers' hydroelectric generating facilities with the power marketing agencies.

(b) *Applicability.* This regulation applies to all civil works field operating agencies (FOA) having generating facilities producing marketable electric power.

(c) *References.* (1) Section 5, Pub. L. 534, 78th Congress, Flood Control Act of 1944, December 22, 1944 (58 Stat. 889).

(2) Section 302, Pub. L. 95-91, 95th Congress, Department of Energy Organization Act, August 4, 1977 (91 Stat. 565).

(d) *Background.* Section 5 of the Act of December 22, 1944 (Pub. L. 534, 78th Congress), provides that electric power and energy generated at reservoir projects under the control of the Department of the Army and in the opinion of the Secretary of Army not required in the operation of such projects shall be delivered to the Secretary of Interior for transmittal and disposal in a manner to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. Section 302 of the Department of Energy Organization Act (Pub. L. 95-91) transfers all functions of the Secretary of Interior under section 5 of the 1944 Act to the Secretary of Energy together with all other functions of the Secretary of Interior, and officers and components of the Department of the Interior, with respect to the Southeastern Power Administration; the Southwestern Power Administration; the Alaska Power Administration; the Bonneville Power Administration; and the power marketing functions of the Bureau of Reclamation.

(e) *Policies.* (1) The Corps is responsible for operating the hydroelectric power projects and providing information affecting cost and availability of power to the power marketing agencies. Marketing the generated power declared excess to the needs of the

projects and recovering Federal investment are the responsibilities of the power marketing agencies.

(2) All FOA Commanders will develop, in coordination with their respective power marketing agency, a system for exchanging operating information. The system will include general operating information and information on conditions that could substantially affect costs or power availability.

(f) *Delegation.* Responsibility for coordinating the exchange of information may be delegated to the District Engineer at the discretion of the Division Engineer.

(g) *Procedures*—(1) *Specific requirements*—(i) *Continuing.* Prompt written notification will be provided to the appropriate power marketing agency each time a change in power operations or conditions which could substantially affect costs or power availability is anticipated.

(ii) *Annual.* Annually, when no changes in power operations or costs are expected for the succeeding 12-month period, the marketing agency will be notified of that fact in writing.

(2) *FOA responsibility.* The FOA directly responsible for communicating with the marketing agency will develop appropriate reporting procedures in coordination with that agency.

[43 FR 8258, Mar. 1, 1978]

§ 209.145 Federal projects involving the disposal of dredged material in navigable and ocean waters.

(a) *Purpose.* This regulation prescribes the policy, practice and procedure to be followed by all Corps of Engineers installations and activities in connection with the disposal of dredged material in navigable waters or the transportation of dredged material for the purpose of dumping it in ocean waters associated with Federal projects as hereinafter defined.

(b) *Applicable laws.* (1) Section 313 of the Federal Water Pollution Control Act (33 U.S.C. 1323, 86 Stat. 816) requires each agency of the Federal Government engaged in any activity resulting or which may result in the discharge or runoff of pollutants to comply with Federal, State, interstate and local requirements respecting the control and abatement of water pollution to the same extent as any person is subject to such requirements. Section 404 of the same Act (33 U.S.C. 1344) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the discharge of dredged material into navigable waters at specified disposal sites. The selection of disposal sites will be in accordance with guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army. If these guidelines alone prohibit the designation of a disposal site, any potential impairment to the maintenance of navigation, including any economic impact on navigation and anchorage, which would result from the failure to utilize the proposed disposal site in navigable waters, will also be considered by the Corps of Engineers in reaching a decision. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shell fish beds and fishery areas, wildlife or recreation areas.

(2) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413, 86 Stat. 1052) authorizes the Secretary of the Army to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters. However, similar to the EPA Administrator's limiting authority cited in paragraph (b)(1) of this section, the Administrator can prevent the issuance of a permit under this authority if he finds that the dumping of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas. Section 103(e) of this Act provides that in connection with Federal projects involving dredged material, the Secretary of the Army may issue regulations, in lieu of its permit procedures (which are prescribed in § 209.120), which will require the application to each project

of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under sections 103 (a), (b), (c), and (d) of this Act.

(c) *Related legislation and other authority.* (1) Sections 307(c) (1) and (2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c) (1) and (2), 86 Stat. 1280) require any Federal agency conducting or supporting activities directly affecting a State's coastal zone or undertaking any development project in a State's coastal zone to do so in a manner which is, to the maximum extent practicable, consistent with State's coastal zone management programs as approved by the Secretary of Commerce.

(2) Section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92-532, 86 Stat. 1052) authorizes the Secretary of Commerce after consultation with other interested Federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters or the Great Lakes and their connecting waters or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Federal activities can only be performed in these sanctuaries if the Secretary of Commerce certifies that they are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(3) The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (a) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (b) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations * * * (See also § 209.410 on environmental impact statements).

(4) The Fish and Wildlife Act of 1956 (16 U.S.C. 472a et seq.), the Migratory Marine Game-Fish Act (16 U.S.C. 760c-760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) express the concern of Congress with the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal Agency which proposes to control or modify any body of water must first consult with the Bureau of Sport Fisheries and Wildlife, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency exercising administration over the wildlife resources of the affected State.

(5) The Endangered Species Act of 1973 (16 USC 668aa-668cc-6, Pub. L. 93-205, 87 Stat. 884) requires Federal agencies in the administration of their respective programs to provide for the conservation of endangered species and to insure that these programs will not jeopardize the continued existence of species which have been identified by the Secretary of the Interior as endangered or threatened, or result in the destruction or modification of the habitat of such species.

(6) The National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function, the Council is authorized to review and comment upon all undertakings carried out by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places.

(d) *Definitions.* For the purposes of this regulation:

(1) The term "navigable waters" means those waters of the United States except the territorial seas which are subject to the ebb and flow of the tide, or are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce (see § 209.260 for a more complete definition of this term).

(2) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(3) The term "dredged material" means any material excavated or dredged from the navigable waters of the United States including any runoff from a contained disposal area.

(4) The term "coastal zone" means the coastal waters and adjacent shorelands designated by a State as being included in its approved coastal zone management program under the Coastal Zone Management Act of 1972.

(5) The term "Federal Project" means work or activity of any nature and for any purpose which is to be performed by or for the Secretary of the Army acting through the Chief of Engineers pursuant to Congressional authorizations. It does not include work requested by another Federal agency on a cost reimbursable basis.

(e) *Factors to be considered in the evaluation of federal projects involving the disposal of dredged material in navigable or ocean waters*—(1) *Disposal of dredged material in navigable waters.* (i) Federal projects involving the disposal of dredged material in navigable waters at a specified disposal site shall be evaluated by the application of guidelines which have been developed by the Administrator, EPA, in conjunction with the Secretary of the Army pursuant to section 404(b) of the Federal Water Pollution Control Act. The criteria for ocean dumping which have been promulgated by the Administrator, EPA and are published in Title 40 of the Code of Federal Regulations, section 227 will be utilized in this evaluation process until these guidelines have been promulgated.

(ii) If these guidelines or criteria alone would prohibit the disposal of dredged material at a specified disposal site, any potential impairment to the maintenance of navigation, including any economic impact on navigation and anchorage which would result from the failure to use the proposed disposal site in navigable waters, will also be considered by the Corps of Engineers in reaching a decision.

(2) *Disposal of dredged material in ocean waters.* (i) Federal projects involving the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine the effect which the proposed dumping will have on human health, welfare, or amenities, or the marine environment, ecological system, or economic potentialities. No transportation of dredged material for the purpose of dumping it in ocean waters will be performed if it is determined that the proposed dumping of dredged material will unreasonably degrade or endanger any of these factors.

(ii) In making this determination the criteria established by the Administrator, EPA, pursuant to section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972 which relate to the effects of the dumping shall be applied. If it is determined that the criteria would preclude the use of a dumping site for the dredged material, the District Engineer shall make an independent determination as to the need for this dumping site which shall be based on an independent evaluation of the potential effect which a prohibition on the use of the dumping site will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States.

(iii) In determining whether or not the proposed transportation of dredged material for the purpose of dumping it in ocean waters should be undertaken, the District Engineer shall make an independent evaluation and determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations,

those sites recommended by the Administrator, EPA, pursuant to section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 will be utilized to the maximum extent possible.

(3) *Effect on wetlands.* (i) Wetlands are those land and water areas subject to regular inundation by tidal, riverine, or lacustrine flowage. Generally included are inland and coastal shallows, marshes, mudflats, estuaries, swamps, and similar areas in coastal and inland navigable waters. Many such areas serve important purposes relating to fish and wildlife, recreation, and other elements of the general public interest. As environmentally vital areas, they constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest.

(ii) Wetlands considered to perform functions important to the public interest include:

(*a*) Wetlands which serve important natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(*b*) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(*c*) Wetlands contiguous to areas listed in paragraph (e)(3)(ii)(*a*) and (*b*) of this section, the destruction or alteration of which would affect detrimentally the natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or environmental characteristics of the above area;

(*d*) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands often include barrier beaches, islands, reefs and bars;

(*e*) Wetlands which serve as valuable storage areas for storm and flood waters; and

(*f*) Wetlands which are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected.

(iii) Although a particular alteration of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, any wetland site involved in a Federal project will be evaluated with the recognition that it is part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas, in consultation with the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife, the Regional Director of the National Marine Fisheries Services of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency (EPA), the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate State agency to assess the cumulative effect of activities in such areas.

(iv) Disposal of dredged material will not be performed in wetlands identified as important to paragraph (e)(3)(ii) of this section, unless the District Engineer concludes, on the basis of the analysis required in paragraphs (e)(1) and (2) of this section, that the benefits of the proposed disposal outweigh the damage to the wetlands resource and the proposed disposal is necessary to realize those benefits. In evaluating whether a particular alternation is necessary, the District Engineer shall primarily consider whether the wetland resources and environment must be utilized in performing the dredged disposal, and whether feasible alternative disposal sites are available.

(v) In accord with the congressional policy expressed in the Estuary Protection Act, Pub. L. 90-454, State regulatory laws or programs for classification and protection of wetlands will be given great weight.

(4) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (see paragraph (c)(4) of this section), District Engineers will consider the reports and recommendations submitted by the Bureau of Sport Fisheries and Wildlife, the National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the State in which the

work is to be performed and these reports and recommendations shall be made an integral part of the project file. All justifiable means or measures to protect and conserve fish and wildlife resources by prevention of their loss and damage, including modification of the proposed operations to eliminate or mitigate any damage to such resources, will be included in the plans for the Federal project to obtain the maximum overall project benefits.

(5) *Historic, scenic, recreational and conservation values.* (i) Disposal of dredged material in navigable or ocean waters associated with Federal projects may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation requires that due consideration be given to the effect which the disposal of the dredged material may have on the enhancement, preservation, or development of such values. Recognition of these values is often reflected by State, regional, or local land use classifications, or by similar Federal controls or policies. In both cases, action on such proposed disposal operations should, insofar as possible, be consistent with, and avoid adverse effect on, the values or purposes for which those classifications, controls, or policies were established.

(ii) Specific application of the policy in paragraph (e)(5)(i) of this section applies to:

(*a*) Rivers named in section 3 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273 et seq.), and those proposed for inclusion as provided by sections 4 and 5 of the Act, or by later legislation.

(*b*) Historic, cultural, or archeological sites or practices as provided in the National Historic Preservation Act of 1966 (83 Stat. 852, 42 U.S.C. 4321 *et seq.*) (see also Executive Order 11593, May 13, 1971, and statutes there cited). Particular attention should be directed toward any site, building, structure, or object listed in the National Register of Historic Places. Comments regarding such undertakings shall be sought and considered as provided by paragraph (g)(1)(v) of this section.

(*c*) Protection of those species which the Secretary of the Interior has by regulation determined to be endangered or threatened pursuant to the Endangered Species Act of 1973 (see paragraph (c)(5) of this section).

(*d*) Any other areas named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such laws as may be established under Federal law for similar and related purposes, such as estuarine and marine sanctuaries.

(6) *Disposal of dredged material in coastal zones and marine sanctuaries.* (i) The disposal of dredged material in navigable or ocean waters in or affecting the coastal zones of those States having a coastal zone management program approved by the Secretary of Commerce will be evaluated to insure that the disposal operations will be consistent with those management programs to the maximum extent practicable. (See also paragraph (i)(2)(vi) of this section.)

(ii) The disposal of dredged material in a marine sanctuary established by the Secretary of Commerce under authority of section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972 will be evaluated to determine the impact which the disposal operation will have on the marine sanctuary. No disposal of dredged material will be undertaken until a certification is obtained from the Secretary of Commerce that the disposal is consistent with the purposes of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary. In appropriate cases, modification of disposal plans will be required to incorporate provisions required by the Secretary of Commerce in connection with his certification.

(f) *Evaluation procedures.* (1) Except as provided in paragraph (f)(4) of this section, the District Engineer will take the following actions with respect to Federal projects involving the

disposal of dredged material in navigable or ocean waters:

(i) Prior to undertaking a Federal project involving the disposal of dredged material in navigable or ocean waters, the District Engineer will issue a public notice as described in paragraph (g) of this section. The notice will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed project, and will be sent to appropriate city and county officials, to appropriate State agencies, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, and to any other interested parties. In addition, the District Engineer may also publish a copy of this public notice (without drawings) for five consecutive days in the local newspaper. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the Field Representative of the Secretary of the Interior, the Regional Director of the Bureau of Sport Fisheries and Wildlife, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency, the Regional Director, Bureau of Outdoor Recreation, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the State agency responsible for fish and wildlife resources, the District Commander, U.S. Coast Guard, and the Office of the Chief of Engineers, Attention: DAEN-CWO-M.

(ii) The District Engineer shall consider all comments received in response to the public notice in his subsequent actions. Receipt of the comments will be acknowledged and the comments will be made a part of the official file. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another Federal agency, the District Engineer may seek the advice of that agency. The receipt of comments as a result of the public notice should normally not extent beyond thirty days from the date of the notice.

(iii) At the earliest practicable time all Federal projects involving the disposal of dredge material in navigable waters or ocean waters will be systematically reviewed and evaluated in terms of the impact on the environment in accordance with § 209.410. A decision based on the assessment as to whether or not an environmental impact statement is required will be made.

(*a*) If the District Engineer determines that the Federal project will not have a significant impact on the environment, he will prepare a negative determination which will be available at least 15 days prior to a public hearing or public meeting, if one is to be held, in response to the public notice.

(*b*) The District Engineer will take the following action with respect to those cases where a negative determination is not appropriate:

(*1*) If the disposal of dredged material in navigable or ocean waters is associated with a maintenance dredging project which is part of a Federal project commenced before 1 January 1970, the District Engineer shall review the proposed maintenance dredging operations to determine whether a significant adverse impact to the overall public interest will result if the maintenance dredging is deferred pending completion of the environmental impact statement or supplement to an existing environmental impact statement. If the District Engineer determines that deferral will be unacceptable from an overall public interest standpoint, he will prepare a determination and findings to this effect which must be completed at least 15 days prior to a public hearing or public meeting if one is to be held. In such cases, the District Engineer will immediately begin preparation of the required environmental impact statement, or supplement, while concurrently following the other procedures of this regulation and during the subsequent performance of the maintenance dredging project if a decision is made to dispose the

dredged material associated with it in navigable or ocean waters. If, however, the District Engineer determines that no significant adverse impact on the public interests will occur pending completion of the required environmental impact statement or supplement, the District Engineer will proceed in accordance with 33 CFR 209.410 and paragraph (f)(1)(iii)(*b*)(*2*) of this section. The provisions of this paragraph (f)(1)(iii)(*b*)(*1*) shall not be applicable after January 1, 1976.

(*2*) If the District Engineer determines that an environmental impact statement or supplement to an existing environmental impact statement must be prepared, and the disposal of dredged material in navigable or ocean waters (*i*) is associated with a maintenance dredging project which is part of a Federal project commenced after January 1, 1970, or (*ii*) involves maintenance dredging associated with a Federal project commenced before January 1, 1970, where the District Engineer has determined that no significant adverse impact to the public interest will occur pending completion of an environmental impact statement or supplement if one is required, or (*iii*) involves any maintenance dredging commenced after January 1, 1976, the District Engineer will proceed in accordance with 33 CFR 209.410. If a public hearing is to be held, the proposed final environmental impact statement or supplement, with responses to all comments received on the draft environmental impact statement, must be completed 15 days prior to the hearing. If a public meeting is planned (see § 209.405), however, the draft environmental impact statement or supplement will be filed with CEQ at least fifteen days prior to the meeting.

(iv) If a person or persons having a demonstrated interest which may be affected by the disposal of dredged material in navigable or ocean waters requests a hearing, or if otherwise required by law or directed by the Chief of Engineers, the District Engineer will arrange a public hearing in accordance with applicable Corps of Engineers regulations. If no public hearing is to be held and the District Engineer nevertheless determines that additional information necessary to the proper evaluation of the proposed disposal operation would probably be obtained thereby, the District Engineer will hold a public meeting (see § 209.405).

(v) If the disposal of dredged material involves any property listed in the National Register of Historic Places (which is published in its entirety in the FEDERAL REGISTER annually in February with addenda published each month), the District Engineer will determine if any aspect of the disposal activity causes or may cause any change in the quality of the historical, architectural, archeological, or cultural character that qualified the property for listing in the National Register. Generally, adverse effects occur under conditions which include but are not limited to destruction or alteration of all or part of the property; isolation from or alteration of its surrounding environment; and introduction of visual, audible, or atmospheric elements that are out of character with the property and its setting. If the District Engineer determines that the disposal activity will have no adverse effect on the property, he will proceed with the standard procedures in this regulation. If, however, the District Engineer determines that the disposal activity will have an adverse effect on the property, he will proceed in accordance with the procedures specified in the FEDERAL REGISTER, Volume 39, Number 18, January 25, 1974 (36 CFR Part 800).

(vi) If it can be anticipated that related work by other Federal and non-Federal interests will occur in the same general area as the Federal project, the District Engineer will include and consider this related work in his planning, processing and review of the Federal project under this regulation. To the maximum extent possible, he will coordinate with interested Federal, State, regional and local agencies and the general public simultaneously with the related projects. (See also paragraph (g)(1)(vi) of this section.)

(vii) After all above actions have been completed, the District Engineer will determine whether the dredged material will be disposed in navigable or ocean waters and if so, the location

of the disposal site, or will refer the project file to the Division Engineer for decision pursuant to paragraph (i)(2) of this section. When the final decision is made, the official making the decision will make a statement of findings to support that decision, and if the decision is made to dispose the dredged material in navigable or ocean waters at a specific disposal site, the statement of findings will include the conditions under which the disposal will be performed. This statement of findings will be dated, signed and placed in the project file. In addition, if it is determined that the dredged material will be disposed in navigable or ocean waters, this statement of findings shall serve to satisfy any need for a Government contractor performing a Federal project to obtain a Department of the Army permit.

(viii) Prior to undertaking a Federal project for the discharge or dumping of dredged material in navigable or ocean waters, Corps of Engineers officials will advise appropriate Regional Administrators of the intended use of the proposed disposal site. If the Regional Administrator advises, within fifteen days if the disposal site is the same as that identified in the public notice or within thirty days if a different disposal site is selected, that he objects to the proposed disposal site, the case will be forwarded to the Chief of Engineers, ATTN: DAEN-CWO-M, in accordance with paragraph (i) of this section for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain an analysis for a determination by the Secretary of the Army that there is no economically feasible method or site available other than that to which the Regional Administrator objects.

(2) In following the procedures prescribed in paragraph (f)(1) of this section, the District Engineer may process each Federal project involving the disposal of dredged material in navigable or ocean waters to be performed within his District separately or may process such Federal projects collectively under one public notice wherever deemed appropriate and to the maximum extent possible.

(3) The District Engineer will publish monthly a list of decisions made on Federal projects involving the disposal of dredged material in navigable or ocean waters during the previous month. The list will identify each project by name, give a brief description and location of the disposal operation, and indicate the decision on the project. It will be distributed to all persons who received any of the public notices on the project or were attendees at a public meeting or hearing.

(4) If the circumstances surrounding a Federal project involving the disposal of dredged material in navigable or ocean waters require emergency action, the District Engineer will, after obtaining approval from the Division Engineer, issue a public notice pursuant to paragraph (g)(1)(i) through (x) of this section, below which will be forwarded to all appropriate Federal and State agencies. The public notice will, in addition, to the information required by paragraph (g)(1)(i) through (x) of this section, describe explicitly the emergency situation and indicate that this work will be performed immediately. If, during the performance of this emergency work, comments are received from this public notice which, in the judgment of the District Engineer, reveal the necessity of modifying the performance of this emergency dredging operation, the District Engineer, following consultation with the Division Engineer, will take appropriate measures to achieve this result. A copy of the public notice will also be forwarded to the Chief of Engineers, ATTN: DAEN-CWO-M when it is issued.

(5) In view of the extensive coordination with other agencies and the public, the District Engineer will initiate action under these regulations sufficiently in advance to meet operation schedules.

(g) *Public notice and coordination with interested parties.* (1) The public notice is the primary method of advising all interested parties of the Federal project and of soliciting comments and information necessary to evaluate the probable impact of the discharge of dredged material in navigable or ocean waters. The notice must, therefore, include sufficient information to

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give a clear understanding of the nature of the activity to generate meaningful comments. The notice should include the following items of information:

(i) The name and location of the Federal project and proposed disposal site(s);

(ii) The citation of the law(s) under which the Federal project is to be reviewed. (See paragraph (b), of this section.);

(iii) A brief description of the Federal project and a description of the estimated type, composition and quantity of materials to be discharged, the proposed time schedule for the dredging activity, and the types of equipment and methods of dredging and conveyance proposed to be used;

(iv) A sketch showing the location of the Federal project including depth of water in the area and all proposed disposal site(s);

(v) A brief description of the existing use of properties immediately adjacent to the disposal area;

(vi) The nature, estimated amount, and frequency of known and anticipated related dredging and disposal to be conducted by others;

(vii) A statement as to whether the proposed disposal site(s) is (are) ones which has (have) previously been designated by the Administrator, EPA;

(viii) A list of Federal, State and local agencies with whom these activities are being coordinated;

(ix) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement;

(x) Any other available information which may assist interested parties in evaluating the likely impact of the disposal of the dredged material;

(xi) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing, within which interested parties may express their views concerning the disposal of the dredged material.

(2) The following statement will also be included in the public notice:

Any person who has an interest which may be affected by the disposal of this dredged material may request a public hearing. The request must be submitted in writing to the District Engineer within —— days of the date of this notice and must clearly set forth the interest which may be affected and the manner in which the interest may be affected by this activity.

(3) If the Federal project involves the discharge of dredged material into navigable waters, the public notice shall also contain the following:

Designation of the proposed disposal site for dredged material associated with this Federal project shall be made through the application of guidelines promulgated by the Administrator EPA in conjunction with the Secretary of the Army. If these guidelines alone prohibit the designation of this proposed disposal site, any potential impairment to the maintenance of navigation, including any economic impact on navigation and anchorage which would result from the failure to use this disposal site, will also be considered.

(4) If the Federal project involves the transportation of dredged material for the purpose of dumping it in ocean waters, the public notice shall also contain the following:

The proposed transportation of this dredged material for the purpose of dumping it in ocean waters will be evaluated to determine that the proposed dumping will not unreasonably degrade or endanger human health, welfare, or amenities or the marine environment, ecological system, or economic potentialities. In making this determination, the criteria established by the Administrator, EPA pursuant to section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972 shall be applied. In addition based upon an evaluation of the potential effect which the failure to utilize this ocean disposal site will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, an independent determination will also be made of the need to dump this dredged material in ocean waters, other possible methods of disposal, and appropriate locations for the dumping.

(5) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the disposal of dredged material associated with the Federal project. A copy of the public notice with the list of the addresses to whom the notice was sent will be included in the file. If a question develops for which another agency has responsibility and that

other agency has not responded to the public notice, the District Engineer will contact that agency directly for its comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constituent or himself, the District Engineer will inform the member of Congress of his determination.

(6) Notices sent to several agencies within the same State may result in conflicting comments from those agencies. Many States have designated a single State agency or individual to provide a single and coordinated State position regarding those matters. Where a State has not so designated a single source, the District Engineer will elicit from the Governor an expression of his views and desires concerning the disposal of dredged material associated with the Federal project.

(h) *Duration of determinations.* (1) If the Federal project involves periodic or annual maintenance dredging, which requires the disposal of dredged material in navigable or ocean waters, the determination as to whether the dredged material will be discharged in navigable or ocean waters will include the disposal of dredged material in such waters required by future periodic or annual maintenance dredging.

(2) The District Engineer may revaluate the location and procedures by which the disposal of dredged material in navigable or ocean waters is performed, and take action to modify the location or procedures if conditions under which those discharges were initially specified have changed materially. In the event a revaluation becomes necessary the same evaluation factors set forth in paragraph (e) of this section will be followed.

(i) *Authority to undertake federal projects involving the disposal of dredged material in navigable or ocean waters.* (1) District Engineers may undertake Federal projects requiring the disposal of dredged material in navigable or ocean waters as are necessary to protect the navigable or ocean waters in all cases in which there are no unresolved substantive objections to the proposed disposal activity. All other Federal projects requiring the disposal of dredged material in navigable or ocean waters, including those cases in paragraphs (i)(2)(i) through (v) of this section, will be referred to Division Engineers.

(2) Division Engineers will review and evaluate all Federal projects referred by District Engineers and, except in those cases identified in paragraphs (i)(2)(i) through (v) of this section, resolve outstanding substantive objections. In so doing, Division Engineers may authorize or defer commencement of a Federal project and may require the inclusion of additional procedures determined to be necessary to protect the navigable waters or ocean waters. However, Division Engineers will refer to the Chief of Engineers, ATTN: DAEN-CWO-M, the following cases for resolution:

(i) When it is proposed to undertake a Federal project involving the disposal of dredged material in navigable or ocean waters and the Regional Administrator, EPA, has advised the District or Division Engineer of his intent to take measures necessary to prohibit or restrict the use of a specified disposal site in navigable waters or that the dumping of dredged material in ocean waters will violate the criteria and restrictions promulgated under section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972;

(ii) When there is substantial doubt as to authority, law, regulations, or policies applicable to the Federal project;

(iii) When higher authority requests the case be forwarded for decision;

(iv) When litigation is expected;

(v) When the disposal of dredged material associated with the Federal project is inconsistent with an approved State coastal zone management plan.

(3) In addition, Division Engineers may at their discretion, refer to the Chief of Engineers, ATTN: DAEN-CWO-M, the following cases:

(i) When the recommended determination is contrary to the stated position of the Governor or of a member of Congress of the affected State(s).

(ii) When there exists a substantial dispute as to size, nature, or effect of the disposal operation associated with the Federal project as distinguished

from opposition to the overall Federal project itself.

(j) *Supervision of Federal projects.* District Engineers will insure that the disposal activity is conducted and executed in conformance with the plans and procedures of the project as expressed in the Statement of Findings. In addition, in those cases where the Federal project involves the disposal of dredged material in ocean waters, District Engineers will forward a copy of the Statement of Findings to the District Commander, U.S. Coast Guard and will take necessary measures to assure that a copy of the Statement of Findings is on board of the vessel(s) involved in the disposal operation.

(k) *Reports.* The report of a District Engineer on a project requiring action by the Division Engineer or by the Chief of Engineers will be in a letter form with all pertinent comments, records, and studies including a copy of all public notices issued, transcripts of the public meetings and public hearings held, the environmental assessment and a proposed statement of findings as inclosures. The following items will also be included or discussed in the report:

(1) Name of Federal project.

(2) Location of proposed work.

(3) Federal, State and local coordinations required and/or obtained.

(4) Date of public notice and public meeting or public hearings, if held, and summary of objections offered with comments of the District Engineer thereon. The comments should explain the objections and not merely refer to inclosed letters.

(5) [Reserved]

(6) Views of State and local authorities.

(7) Views of District Engineer concerning probable effect of the proposed disposal on:

(i) Navigation, present and prospective.

(ii) Flood heights and flood damage protection.

(iii) Beach erosion or accretion.

(iv) Conservation.

(v) Marine and wildlife.

(vi) Water quality.

(vii) Aesthetics.

(viii) Ecology (general environmental concerns).

(ix) Historic values.

(x) Recreation.

(xi) Economy.

(xii) Water supply.

(xiii) Land use classifications and coastal zone management plans.

(xiv) Public interest (needs and welfare of the people).

(8) Other pertinent remarks including, if applicable:

(i) Persistence and permanence of the effects of disposal of pollutants on the particular waterbody;

(ii) Effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;

(iii) Other possible locations and methods of disposal or recycling of pollutants including land-based alternatives;

(iv) Effect on alternate uses of the affected waterbody such as mineral exploitation and scientific study.

(9) In addition, if the Administrator, EPA, indicates an intent to prohibit or restrict the use of a proposed dredge disposal site, the report shall also contain the following:

(i) The effect of not using the proposed disposal area on navigation, economic and industrial development, and foreign and domestic commerce in the affected region.

(ii) Other possible methods of disposal and appropriate locations for such alternate disposal.

(iii) Any resultant problems associated with the scheduling and scarcity of available dredging equipment.

(10) Conclusions.

(11) Recommendations including any proposed special procedures.

(Title II of Pub. L. 92-405, 86 Stat. 621, 623)

[39 FR 26636, July 22, 1974]

§ 209.147 Guidelines for the Industry Capability Program.

(a) *Purpose.* This regulation provides guidance for the administration and supervision of the Industry Capability Program (ICP).

(b) *Applicability.* This regulation applies to all OCE elements and all field operating agencies operating plant performing dredging, or performing dredging work under contract.

(c) *References.*
(1) 33 U.S.C. 622.
(2) 33 U.S.C. 624.
(3) 33 CFR 209.145.
(4) ASPR 1-706; 18-108.
(5) ER 37-2-10.
(6) ER 1110-2-1300.
(7) ER 1125-2-312.
(8) ER 1130-2-307.
(9) ER 1180-1-1.

(d) *General.* (1) Pursuant to Congressional authorization contained in the Public Works Appropriation Act of 1973 (Pub. L. 92-405), the Chief of Engineers has prepared a report to the Congress on the national dredging requirements. The report relates to a study compiled by the firm of Arthur D. Little, Inc. The study, which was completed in 1974, has become known as the "National Dredging Study." The study covered Corps of Engineers dredging practices over the ten years prior to the study period, dredging requirements for the next ten years, and the administrative procedures of the Corps connected with dredging. In the report on the study, the Chief of Engineers concluded that a program to solicit bids for dredging work was desirable to ascertain the capability of the Industry to accomplish the work at reasonable prices and in a timely manner. Authority to conduct a program of this nature is within the general authority and responsibility of the Corps of Engineers to operate and maintain Federal navigation projects.

(2) This regulation includes uniform procedures to provide a basis for an objective evaluation of the Corps-Industry roles.

(3) The ICP includes two parts: (i) *Part One: Hopper and sidecasting dredges.* A national summary generally describing the work performed by Corps hopper and sidecasting dredges is available for HQDA (DAEN-CWO-M) WASH DC 20314. The summary is in the form of a comprehensive set of annotated project maps and statistical data. Details of any given hopper and sidecasting dredge project can be obtained from appropriate districts and divisions.

(ii) *Part Two: Cutterhead, dustpan, and mechanical dredges.* A national summary describing dredging projects for these types of dredges is not available. The development of detailed guidelines and criteria, including project maps and statistical data, for this part of the Program will be accomplished by each division on a regional basis since this portion of the work is limited in nature.

(4) In addition to those projects advertised under the ICP as a result of Industry interest, other projects will be advertised when Corps plant is reasonably available and suitable. The advertisement of those projects outside of the ICP will include a representative number and type of jobs, including those advertised on an emergency basis. The advertisement of additional jobs, other than those selected by the Industry, will provide a representative array of statistics to determine the Industry capability and response to a wide variety of project conditions and requirements, including emergencies.

(5) An analysis of all data generated during the course of this Program will be made by DAEN-CWO-M to assess the relative effectiveness of Corps and Industry equipment to perform the national dredging requirements at reasonable cost and in a timely manner. This assessment will be based on the comprehensive data required in paragraph (f) of this section.

(e) *Guidance.* (1) The standard procedures included in this ER are applicable to Parts I and II referred to in paragraph (d)(3) of this section. The program is scheduled for accomplishment over a four year period. Specific projects or portions of projects will be advertised during each fiscal year of the program. The advertisement of projects in which Industry has indicated a specific interest (paragraph (g) of this section) is preferred to the advertisement of projects in which there is no indication of Industry interest. However, there is always the possibility that Industry will not indicate sufficient interest to meet a minimum level of program performance or that projects selected by the Industry will not include a representative cross section of the Corps dredging requirements. Under these conditions, divisions and districts are instructed (paragraph (h)(4) of this section) to include additional projects. To assure a comprehensive program, the ICP

will include projects traditionally performed by Corps plant (hired labor) and, as indicated in paragraph (d)(4) of this section, additional projects that have been accomplished, either occassionally or entirely, by contract. The Industry Capability Program will range in dollar volume from a minimum value equal to 25 percent of the fiscal year's total hired labor dredging program to an upper limit that is constrained only by the availability of funds combined with the availability of Corps plant to provide competitive bidding. The minimum value is a lower target level and may have to be revised commensurate with availability of funds and Corps plant. Out of the total jobs advertised per fiscal year under this program, no more than 25 percent of the traditional Corps hired labor dredging projects will be advertised, unless approved by DAEN-CWO-M. The remainder of the total ICP projects advertised will be made up of dredging projects that have been accomplished by contract.

(2) Until such time as the Industry develops a capability to dredge exposed ocean bars on the Pacific coast, the ICP will exclude work being accomplished with Corps hopper dredges in this area. Therefore, the scheduling of these dredges will continue to follow current practices. However, if the Industry expresses a desire to compete for the exposed ocean bar work along the Pacific coast, arrangements will be made so that the Industry can submit bids for the performance of this work.

(3) Division engineers have the responsibility to assure that the guidelines prescribed in this regulation are implemented by their district engineers on a uniform basis. In the event a deviation from the standard program is considered necessary, DAEN-CWO-M will be notified two weeks in advance of the proposed change.

(4) A specific organizational element within each division and district will be designated as the contact point for Industry on all matters pertaining to the ICP. This organizational element will be responsible for appropriate coordination between district and division elements having an input to the program. Contingency plans are to be available for the utilization of Corps dredging plant on alternate projects prior to the opening of bids on each of the advertised jobs. It is necessary to assure that Corps plant will continue to be fully utilized so that the plant will be available to bid other jobs throughout the duration of the ICP. Such alternate projects, including consideration of deferred maintenance work, should be selected so as to have a minimum effect on the overall ICP target referred to in paragraph (e)(1) of this section. A copy of these contingency plans will be furnished DAEN-CWO-M for determination of inter-regional scheduling of equipment and budget requirements.

(5) Estimators must have experience in the operation and maintenance characteristics of the class of dredge used for the Hired Labor Estimate. If the Hired Labor Estimate is based on the use of a "borrowed" dredge, the "owning" district estimators will assist in the formulation of the estimate. All Hired Labor Estimates must have the approval of the division engineer to assure uniformity in the estimating procedures within each division.

(6) The ICP jobs will be placed on the market in accordance with existing procurement regulations and policies of the ASPR and ER 1180-1-1, including the Small Business Set-Aside requirements of ASPR 1-706. In cases where administrative requirements delay the award of a contract, the actions of the contracting officer shall be in consonance with the following:

(i) *Government Plant.* Where due to administrative delays, the commencement of dredging results in such a significant change in operating conditions as to impede efficient execution of work; or, if the delays result in questionable benefits to be derived from accomplishing the work, the contracting officer shall either defer the work entirely, or accomplish only that portion of the work necessary to meet the seasonal requirements.

(ii) *Contract.* Where due to administrative delays, the commencement of dredging results in such a signficant change in operating conditions as to impede efficient execution of work with unreasonable increased cost to the contractor; or, if the delays result

in questionable benefits to be derived from completion of the work, the contracting officer may terminate the work for the convenience of the Government in accordance with existing regulations.

(7) The Corps-Industry Working Group established during the development of the ICP, will remain active for the duration of the ICP. The Working Group will meet periodically to review the status of the program and to recommend any changes in the procedures and policies prescribed in this regulation.

(8) Projects selected for the ICP should meet all environmental criteria, including compliance with 33 CFR 209.145 "Federal Projects Involving The Disposal of Dredged Material in Navigable and Ocean Waters."

(9) Corps dredges are to be used in competition with Industry plant in accordance with the following policy for all dredging work.

(i) Where Corps dredges are available and have the capability to perform work being advertised for award to Industry, Corps dredges shall be used as the bases for hired labor estimates for evaluating bids in conformance with 33 U.S.C. 624. In those instances where the Industry low bid is more than 25 per centum in excess of the estimated cost of doing the work with Corps plant, the work will be accomplished with Corps dredges. Fair and reasonable contract estimates shall be used to evaluate bids received for dredging work only where Corps plant is not available and suitable.

(ii) Traditional district and division boundaries and policies on the restricted use of Corps dredges shall not be considered as limiting factors in determining the availability and utilization of Corps dredges. Division engineers currently having the responsibility for dredging plant shall review its utilization against division needs. Where unused Corps capability exists, the responsible division engineer will coordinate with other divisions.

(iii) To assure Industry the maximum number of opportunities to display the effectiveness of its equipment, Corps dredges shall compete as often and under as many different situations as possible, including emergencies. In some instances this may result in Corps plant performing work currently done by Industry; in others, Industry can be expected to pick up work normally done with Corps plant. In the final analysis, every job where Industry has been given the opportunity to compete will be considered in determining the manner in which future Federal dredging programs will be executed.

(10) The Hired Labor estimating procedure has been standardized Corps-wide, in accordance with the guidance outlined in ER 1110-2-1300. In order to assure uniformity in their programs, division engineers will arrange periodic meetings to discuss the adequacy of the estimating procedures. A copy of the summary of these meetings will be furnished DAEN-CWO-M to assure that standard estimating procedures are used throughout the Corps.

(11) Protests to the Government estimate or award, or difficulties in resolving controversies in specification provisions, could result in undue delays in the orderly and economical accomplishment of the dredging work. Every effort will be made by the Corps to resolve protests in a timely manner. However, such delays could have a serious impact on navigation and, depending upon the extent of protests registered, it may become necessary to adjust the extent of the ICP as indicated in paragraph (e)(6) of this section. In emergencies and other critical cases, the immediate assignment of a Corps dredge to the work may become necessary. However, the approval of DAEN-CWO-M will be obtained prior to taking such an action.

(12) All projects awarded to the Industry during the ICP may be readvertised in subsequent years of the program as the need for dredging arises and Corps funds and plant are available.

(f) *Documentation and reporting.* (1) During the course of the ICP it is essential that divisions maintain complete the detailed records to provide for the reporting requirements referred to in paragraph (f)(2) of this section. Prompt surveys must be made to determine the before and after dredging quantities. In addition, fre-

quent surveys will be made to assure that the effects of shoaling or scouring rates are minimized. It is most important that this information be available. Therefore, if necessary, surveys will be accomplished by contract with the proviso that the firm has licensed surveyors and is not associated with the dredging firm. In all cases, complete hydrographic survey records must be maintained. To that end the following guidance is furnished as to the information that should be annotated on the survey charts:

(i) *Predredging survey.* Show the date the survey was performed.

(ii) *Acceptance section surveys.* Show the dates the surveys were requested, performed and furnished to the master or captain of the Industry or the Corps dredge.

(iii) *Final acceptance survey.* Show the dates the survey was requested, performed and furnished to the master or captain of the Industry or the Corps dredge.

(2) During the course of the ICP, division engineers will make quarterly reports on a project by project basis and a summary report at the end of each fiscal year for all maintenance and new work dredging activities. The reports shall include all dredging work performed during the fiscal year, including both hired labor and contract work performed under the ICP and all dredging work performed outside the ICP. A copy of each quarterly report will be furnished DAEN-CWO-M within thirty days following the quarter, with separate tabulations for maintenance and new work activities. The reporting format is attached as Appendix A. The quarterly and summary reports shall include the estimated and actual costs and times required for the plant (Corps or Industry) to perform the work. The summary reports shall be furnished DAEN-CWO-M within thirty days following the end of the fiscal year in which the work is performed. These reports (both quarterly and summary) shall include all division dredging work performed during fiscal years 1977 through 1980, including dredging work performed for beach nourishment, levee construction and land reclamation as well as for the maintenance or construction of navigation channels. For fiscal year 1977, a single report (instead of the quarterly reports specified) on each maintenance and new work project shall be submitted to DAEN-CWO-M in addition to a summary report.

(g) *Preliminary project selection.* The following guidance is to be followed by the divisions and districts in the development of a list of projects for Parts One and Two of the ICP.

(1) Individual contractors and their regional and national associations will be requested by the division to submit, annually, a list of projects they desire to be advertised under the ICP. The list may include only a portion of a project best suited to Industry plant so long as the remaining portion or portions of the project are suitable for efficient and economical accomplishment by Corps plant. Project maps and dredging records of projects being considered will be furnished the Industry to assist in their evaluation of projects. As indicated in paragraph (d)(3)(i) of this section, a national summary of Part One projects is available from DAEN-CWO-M.

(2) In order to assure that a meaningful list is developed, the district engineer must emphasize to the Industry representatives that the following data for each of the projects should be considered in the selection of projects by the Industry:

(i) Detailed information available from Corps Districts; such as the specific areas dredged by Corps and/or Industry dredges in previous years; face and type of material to be removed; latest surveys available; location of disposal areas; before and after dredging surveys of previous work; environmental considerations and other pertinent records and information.

(ii) The class of Corps plant previously used on the work.

(3) The preliminary lists of projects which the Industry members desire to be advertised will be accepted from individual firms or from regional or national associations. These lists may be mailed or given to the organizational element designated in the division and district offices as provided for in paragraph (e)(4) of this section. The procedure for the final selection of the ICP

projects that will be advertised during a designated fiscal year is described in paragraph (h) of this section.

(h) *Final project selection.* (1) After evaluating the information furnished by the Industry and the overall dredging workload requirements, division engineers will prepare proposed advertising schedules for Parts One and Two by multiple fiscal years after due consideration of current year funds, budget year projections, and the availability of Corps plant. The total estimated dollar value of the projects selected by the divisions should reflect the guidance provided in paragraph (e)(1) of this section. A copy of a composite list of the projects selected for the ICP and the projects outside the ICP, complete with advertising and estimated performance schedules, will be forwarded to DAEN-CWO-M to aid in the coordinated implementation of the program. Divisions and districts, by public notice or any other suitable means, will notify the Industry on a national basis of the projects scheduled for advertisement in a given fiscal year. Each year upon release of the President's Budget, the budget year projections will be reviewed and the multiple fiscal year program schedule adjusted accordingly. The development of advertising schedules will be coordinated with Industry representative.

(2) Any adjustments in the listing of projects will be furnished DAEN-CWO-M immediately after the adjustment is made.

(3) A representative number of jobs requiring immediate action on an emergency basis will be scheduled for advertisement. These jobs will be scheduled even if Industry does not express an interest.

(4) In the event the Industry list of project does not meet the minimum guidance of paragraph (e)(1) of this section, the division engineer will prepare a list of additional projects to make up the difference.

(i) *Specifications*—(1) *Scheduling flexibility.* (i) Subject to the needs of navigation and emergency dredging work, the start and completion dates for projects will allow sufficient flexibility to permit the most efficient use of plant as related to bidding other work on the market and favorable weather and seasonal conditions.

(ii) The bidding schedule must allow for reasonable time to resolve bid protests, and permit contract award such that the performance of project dredging requirements may be accomplished by Industry (or Corps) dredges during normal seasonally favorable dredging conditions. Where there is insufficient time to bid a project prior to the onset of unfavorable dredging conditions, the work must be amended in scope and/or rescheduled as indicated in paragraph (e)(6) of this section, or performed by Corps plant where emergency or critical dredging exists as indicated in paragraph (e)(11) of this section.

(iii) Where the interest of navigation traffic will allow, dredging frequencies at any given project will be adjusted to permit sufficient accumulation of shoaling between dredging periods to provide for economical dredging. When feasible and justified by shipping requirements, division engineers may provide for advance maintenance to extend the time interval between maintenance dredging operations.

(2) *Units of pay.* (i) Pay quantity will normally consist of the cubic yards on inplace material removed from within the required pay prism, plus the side slope and overdepth allowances, except as provided for under paragraph (i)(2)(ii) of this section. Before and after dredging surveys will be taken to determine the quantity of the pay material removed, as well as frequent progress surveys as discussed in paragraph (f)(1) of this section. The required pay prism includes that material lying between the contract limit lines and above the depth to which material is required to be removed.

(ii) Other methods of work measurement and payment may be utilized where seasonal, weather or rapid shoaling conditions preclude the use of normal surveying procedures for before, during and after dredging soundings. In these exceptional cases a mutually agreed upon plan for payment will be worked out between Industry and the contracting officer prior to advertisement. Prior approval of these plans by DAEN-CWO-M is required. However, it must be recognized

that plans other than for the inplace measurement of material will be the exception rather than the rule. Careful selection of acceptance section lengths coupled with timely surveys should minimize the need to utilize bin, scow, pump production, or any other alternate method of determining the payment quantities. If these latter methods are used for payment purposes, surveys should be made on a frequent basis to provide adequate monitoring of job progress.

(iii) In all cases, the specifications will include provisions or clauses that will permit any type of dredging plant to be bid on the work. This provision is essential to assure that the entire Industry has an opportunity to bid every job advertised.

(3) *Allowances and tolerances*—(i) *Overdepth.* The allowable pay overdepth for maintenance projects will normally be two feet. However, the latitude in determining the payment yardage for a given project provided for in paragraph (i)(1)(ii) of this section, will be utilized whenever practicable.

(ii) *Side slopes.* Material actually removed to provide side slopes not flatter than those shown on the contract drawings, but not in excess of the amount originally lying above the specified side slope, will be paid for, whether dredged in its original location or by dredging a space below the allowable pay overdepth slope plane at the bottom of the slope to accommodate the upslope material falling into the cut. To the extent practicable the Corps will prescribe side slopes not steeper than the natural angle of repose of the material to be dredged. Pay overdepth allowed for the channel cut will also apply to the side slopes, measured vertically. The provisions of this paragraph also apply to end slopes.

(iii) *Toe of side slopes.* Any residual material remaining above the required pay prism as defined in paragraph (i)(2)(i) of this section, will be accepted, but not paid for, provided this material lies below a specified tolerance line. This tolerance line is defined as a straight line joining the following two points: (A) A point on the required pay prism base line located a distance of one-fourth channel width from the channel center line; and (B) a point located at the channel line and above the required pay prism base line a distance equal to the specified channel overdepth, but not exceeding 2 feet.

(iv) *Tolerance.* In addition to the tolerance limits established in paragraph (i)(3)(iii) of this section, the district engineer may include a tolerance provision in the specifications for acceptance of shoal material remaining above the required pay prism, but not to be paid for, in the remaining channel area, provided the material is of such nature that the presence of a number of shoals of minor depth deviation would have a negiligible effect on navigation or when the required pay prism depth includes advance maintenance. For this purpose, the remaining channel area is defined as that portion of the channel which lies between two points located on the required channel prism baseline a distance of one-fourth channel width from and on both sides of the channel center line. The selected tolerance depth should be realistic and based on the nature of the bottom material but in no case will it exceed 0.5 foot and only if the maximum width of each shoal area is less than 5 percent of the full project channel width and further provided that the longitudinal length of any given shoal does not exceed 25 percent of the project channel width. In addition, the cumulative widths of the various individual shoals within the shoal area, at any given channel cross section, cannot exceed 25 percent of the channel width. In all cases the maximum length for any shoal is 25 percent of the channel width.

(4) *Acceptance section lengths and widths.* For both the Corps and the Industry, prescribed acceptance section lengths and widths shall be suitable and equitable for the types and size of dredges expected to bid on the work. Since the jobs may be bid on the basis of a wide variety of dredges, the specifications shall clearly indicate the respective acceptance section lengths applicable to each type of dredge. The dimensions of the acceptance sections shall be consistent with the shoaling rates and patterns peculiar to the project and the production capabilities of

the type dredges involved. Acceptance section lengths for cutterhead, dustpan and mechanical dredges will fall generally within the range of 1,000 to 2,000 feet depending upon the nature of the project. Acceptance section lengths for hopper dredges will fall generally within the range of 2,000 to 4,000 feet subject to the nature of the project. However, if unusual conditions or circumstances make it impractical to limit the acceptance section lengths to the ranges indicated above, a deviation is permissible. Acceptance section widths also should be realistic based on the types of dredges involved and the shoaling rates in the channels so that the successful bidder will not be burdened for an undue period for maintenance of completed work.

(5) *Disposal areas.* All approved Corps disposal areas will be made available to Industry and Corps plant. This is not to preclude Industry from furnishing its own environmentally approved disposal areas provided their acceptance by the Corps will not delay start and completion of the work beyond the time prescribed in the specifications.

(6) *Performance period.* There has been an increasing trend for districts to specify extended performance periods, which can limit the effective use of the project by commerce. The performance period stated in the specifications is to be carefully analyzed to assure that it is not excessive.

(7) *Specific job restrictions.* Any specific job restrictions or condition should be discussed with Industry before selections are made for the ICP. No changes in the stated restrictions or conditions, either by deletion or addition, should be made without advising the Industry.

(j) *Review of plans and specifications by prospective bidders.* Prospective bidders are to be encouraged by the contracting officer to review project plans and specifications with the intent of offering suggestions for changes, in the interest of providing the least restrictive and most economical job requirements consistent with environmental considerations and availability of funds. Whenever possible, a preliminary set of plans and specifications will be made available prior to advertising for Industry comment and suggested changes. Whenever time does not permit a pre-advertising review of the plans and specifications and Industry requests such opportunity for review of the plans and specifications, the time between the date of advertisement and the date of opening bids should be extended beyond the usual 30-day period an additional period of 15 days to allow time to consider any Industry suggestions.

(k) *Bidding time.* Subject to appropriate consideration of the relative urgency of the work and the impact on commerce, the time allowed between advertisement and opening of bids will be not less than 30 days. Bid opening dates may be extended as warranted by circumstances. This provision does not apply to those jobs advertised on an emergency basis.

(l) *Pre-bid opening actions.* In order to facilitate the comparison of the low bid with the hired labor estimate, attendant Corps costs including surveys, supervision, inspection, and overhead to be added to the low bid for evaluation purposes will be stated in the specifications.

(1) Since the amount of the attendant Corps costs cannot reasonably be determined prior to preparation of the Hired Labor Estimate, the information will be furnished by an amendment to the specifications prior to opening bids reading generally as follows: "AWARD OF CONTRACT. Award will be made to one bidder. The Corps Hired Labor Estimate for this work will be based on a Corps-owned dredge of the (insert name and type of dredge) class utilizing (insert an ocean dumping area, direct pump-out, or insert any other type of disposal). An item of allowance profit will not be included in the Corps estimate. Attendant Corps costs, including surveys, supervision, inspection, and overhead, will be added to the low bid for the purpose of determining reasonable costs pursuant to ER 1180-1-1, paragraph 1-372(g). The amount of Corps costs to be added for this evaluation is estimated at $——— ."

(2) In those cases where more than one type of dredge is suitable for the work, the amount of Corps costs for each type should be shown. The

amount of costs to be added to the contractor's bid should be predicated on the type of plant involved and the estimated performance period of each type with consideration being given to differing disposal techniques, changes in environmental conditions, monitoring imposed by differing water quality considerations, and any other pertinent consideration. In this case, the specifications will contain the estimated Corps cost for each type dredge, property identified.

(m) *Post bid opening action.* (1) After opening of bids, the low bid will be adjusted to provide for the attendant Corps costs (see paragraph (l)(1) of this section), and comparison made with the hired labor estimate to determine whether award should be made or all bids rejected. Prior to rejection of bids, the low bidder will have the right to protest the adequacy of the Corps Hired Labor Estimate. The Corps will take all possible means to expedite processing of protests.

(2) Immediately after bid opening the following information will be provided DAEN-CWO-M by telephone and subsequently in writing.

(i) Project name and estimated total yardage.

(ii) Government estimate.

(iii) Attendant costs.

(iv) Name of plant (Corps or industry).

(v) Number of bids received and apparent low bidder.

(vi) Apparent low bid and high bid.

(vii) Estimated starting date and estimated completion date.

(3) An Abstract of Bids will be furnished DAEN-CWO-M at the earliest practicable date after bid opening.

(n) *Supervision and administration*—(1) *Equal application.* The same level of supervision and inspection effort is to be applied to both Corps and Industry dredging operations.

(2) *Dredging surveys.* Ordinarily, predredging surveys for payment or crediting purposes will be made immediately prior to commencement of the work. Normally, a sufficient length of channel in advance of the dredge will be surveyed to assure that the dredge will not be delayed in prosecution of the work. Final or after dredging surveys will be made upon completion of the entire work, if a small job, or, if a major job, upon the completion of each acceptance section as set forth in the specifications. However, in fast shoaling reaches the acceptance survey procedure, in equity to both the Corps and the contractor may be varied to meet the unusual job conditions. To minimize controversial issues in connection with surveys for dredging, the following is prescribed:

(i) Initial or estimated quantity surveys made for the purpose of obtaining quantities to include in plans and specifications will be made as close to the advertisement date as possible, but not more than 120 days prior to advertisement.

(ii) Original or predredging surveys for payment or crediting purposes will be made as close to the start of dredging as possible, but not more than 30 days prior to commencement of work in the section or channel reach to be covered by the survey. Plotted surveys will be made available to the dredge master or captain prior to the start of the work. However, in those cases where the initial survey is recent enough and the dredging area is relatively stable there may not be a need for a predredging survey. If a district engineer feels that a particular job falls within this category he could state in the specifications that the initial survey is recent and a more current one is not deemed necessary. However, if the contractor makes a request, a pre-dredging survey will be made.

(iii) Final or after dredging surveys for acceptance and payment purposes will be made as soon as possible, but not more than two weeks after completion of work in any acceptance section or other unit of work as prescribed in the specifications paragraph Final Examination and Acceptance. However, since the expeditious release of the dredging equipment upon completion of dredging operations is of prime importance, completion of all work in the final acceptance section by the dredge under the contract, remaining surveys for acceptance will be completed within three calendar days, except as provided for in paragraph (n)(2)(iv) of this section.

(iv) Deviations from the above prescribed limiting time elements may be necessary because of unusual job conditions or adverse weather. In such instances a memorandum for record explaining the justification for such deviation should be made a part of the contracting officer's project file.

(v) Results of surveys made pursuant to the specifications paragraph final examination and acceptance will be furnished to the dredge master or captain at the work site as the acceptance sections are surveyed and found satisfactory.

(vi) In instances where the contracting officer's representative finds it necessary to direct redredging because of a lack of acceptable depth a survey map or record of soundings specifically identifying those areas where acceptable depths do not exist will be made available to the dredge master or captain at the work site for examination before the start of redredging.

(o) *Hired labor estimates.* ER 1110-2-1300 provides the basic guidelines, procedures and format for preparing hired labor estimates for hopper dredging and hydraulic pipeline dredging. Its objective is to assure Corps wide standardization of the procedures for preparing hired labor estimates. Accordingly, all hired labor estimates prepared under the ICP will be in accordance with the provisions and guidelines of ER 1110-2-1300. However, in order to assure estimating uniformity and a common understanding of the terms and procedures associated with dredging work, particularly that performed by hopper dredges, the following information and guidance is furnished in connection with the preparation of hired labor estimates:

(1) *Corps historical plant performance records.* (i) Traditional yardage terms used by the Corps in its reporting system and historical records for the hopper dredges are as follows:

(A) *Hauled yardage.* Bin measurement, computed in terms of volume of material at in place density.

(B) *Agitated yardage.* Pump production measurement, computed in terms of volume of material at in place density.

(C) *Pay place (credited) yardage.* Quantity of material removed from within the maximum pay prism including allowable overdepth, all as computed from before and after dredging surveys.

(D) *Excess yardage.* Quantity removed from outside of the maximum pay prism which includes allowable overdepth; based on before and after dredging surveys.

(E) *Estimated natural shoaling or scouring.* The in place volume of material estimated to have been deposited or removed within the maximum pay prism by natural causes based on historical records of shoaling or scour patterns.

(ii) Corps records of hopper dredge performance on projects where accurate and complete before and after dredging surveys were made to provide in place yardage data (paragraphs (o)(1)(i)(C) and (o)(1)(i)(D) of this section) should provide a good basis for estimating dredge production on the same or similar work. It is recognized that on certain projects such data may be lacking and dredge performance may have to be estimated on the basis of hauled yardage (paragraph (o)(1)(i)(A) of this section). Therefore, the judgment factor required to estimate the pay place (or credited) yardage, the excess yardage and the pay yardage remaining above the allowable pay overdepth grade, where only prior data on hauled yardage is available, becomes of paramount importance.

(iii) When relating past performance records and costs to IC jobs, the estimator must recognize the need for a review of the records and how they were developed, adjusting where necessary to translate dredge performance as reflected by the historical records to specific contract requirements for the proposed work. For example, such differing requirements may be reduced production in fillet areas and slopes (possibly not required on prior in-house work); more cleanup; higher survey costs; and other restrictive or more stringent specification requirements.

(2) *Checklist of items to be considered in hired labor estimates.* (i) Plant rates shall include all costs involved in operating the dredge as required and recorded on ENG Form 22, except that

the cost item for the plant replacement increment shall not be included. However, the estimate shall include estimated changes in cost of fuel, supplies, payrolls, repairs, etc., not included in the current plant rates.

(ii) A pro-rata share of land and dock support facilities and other costs applicable to the dredge operation and the performance of work on a given project.

(iii) All attendant and support plant required, such as tugs, barges and cranes.

(iv) Preparatory work and mobilization costs shall be realistically estimated, including special rigging and other additions to existing plant as required to accomplish a specific task on a particular job.

(v) In formulating the hired labor estimate the volume of undredged pay quantity and excess nonpay quantity will be realistically estimated, using experience in similar materials for the type of dredge used in the estimate.

(vi) Cleanup and delay costs incidental to job acceptance.

(vii) Contingencies that might be applicable when experience or performance records on the same or similar projects are not available.

(viii) The cost of surveys performed for acceptance and payment purposes should be comparable if the work is performed by Corps plant or under contract provided similar type plant and performance periods are involved. However, the cost of surveys required for operational control during the course of the work performed by Corps plant will be considered a direct cost item. Similarly, operation control surveys required by industry plant will be the contractor's responsibility and at his expense.

(ix) In some instances natural shoaling or scouring can occur between the time of survey made prior to the bidding of the job and the survey be made before commencement of dredging. When such shoaling or scouring is expected to be of such magnitude that it would affect the unit cost of dredging, notwithstanding any modification in contract price which is provided for in the "Variations in Estimated Quantities" provision in the specifications, then such shoaling or scouring should be considered in the preparation of the plans and specifications. Shoaling of this type should be considered in the development of the bid schedule quantities in the specifications by adjusting the quantities to be dredged, as computed from the prebidding survey to account for the shoaling or scouring. The net yardage derived in the adjustment becomes the bid schedule advertised quantity. In such cases the specifications should clearly state that the quantity shown in the bid schedule includes an adjustment of a specified amount. The volume of natural shoaling or scouring that may occur in an acceptance section during the period of the dredge operation is usually minor extent and is not considered in the development of the estimate of the gross quantity of material to be removed. However, if the district engineer considers that the effect of such shoaling or scouring on the estimate would be significant, then an allowance of the yardage involved may be provided in the estimate of gross yardage.

(3) *Estimating format.* (i) The estimating format in the Appendixes of ER 1110-2-1300 provides estimators with guidelines for preparing an estimate for the proposed work. While the specific examples provided in the Appendixes are for hopper dredge and hydraulic pipeline dredge, it is intended that with minor changes the format can be used for other types of plant (sidecaster, dustpan, plain suction, mechanical). However, DAEN-CWE-BA is to be advised of any deviations of a major nature, other than those associated with the requirements to adapt the format to a specific type dredge plant, that may become necessary to accommodate a particular situation.

(ii) Estimates are to be based on cost without profit, using current data. Job requirements are to be carefully analyzed and evaluated by an experienced engineer with a background in dredging. Completed estimates should be reviewed for accuracy and completeness by an employee with dredging experience to reduce the possibility of errors and omissions. Current cost data should be maintained by correspondence with competent sources, as op-

posed to verbal contacts, and by careful records of analysis of completed comparable work.

(iii) The original Government estimates of jobs actually performed can serve as a reference for future estimates, especially for recurring work. For such estimates to serve as an updated reference, they must be revised to reflect actual job performance and costs. The usual method of keeping estimates records current is to copy on the estimate next to each item the actual pertinent cost and performance data from the job completion report. This will direct attention of the estimator to major deviations between the estimated and actual amount so that adjustments can be made in future estimates.

(4) *Approval.* All hired labor estimates for the ICP must be approved by the division engineer prior to the opening of bids.

Appendix A—Format for Reporting Information on Dredging Projects

Information relating to scheduling timeliness of the dredge performance and any adverse effects on navigation are to be documented for future reference as part of the overall assessment. Compile separate tabulations for new work and maintenance projects. Specific information which is to be compiled for all dredging projects, as specified in paragraph (f)(2) of this regulation, is as follows:

1. Name of the reporting Division and District.
2. Project identification and description (include method of disposal, diked areas or open water, required project depth, overdepth in feet, project width, type of material, exposed or protected area, distance to disposal area, elevation of disposal area, and all other pertinent information).
3. Type of project, whether maintenance, new work, or a combination of both categories.
4. Type of program, designation, whether the project was performed under the ICP or outside the ICP.
5. Date of Bid Opening and Date of Contract Award.
6. Abstract of Bids. (Attached as an enclosure.)
7. Contract number (where applicable) and date.
8. Contractor's name (where applicable) and identification as to whether the contractor is small business or large business.
9. Date of Notice to Proceed.
10. Date of Equipment arrival at the projects.
11. Date that dredging work started.
12. Date that all work was completed.
13. Corps or Contractors Dredge that performed the work by name and description (including discharge diameter, pump and cutterhead horsepowers).
14. A list of attendant plant, including basic descriptive information.
15. Performance time (estimated and actual).
16. Total Required Pay Prism Yardage including side slope allowance (Estimated and actual).
17. Total Allowable Pay Overdepth Yardage (Estimated and actual).
18. Maximum Pay Yardage, (16)+(17) items above (Estimated and actual).
19. Total Non Pay Yardage (Estimated and actual).
20. Total Pay Overdepth Not Dredged (Estimated and actual).
21. Total Pay Material Remaining (Tolerance) (Estimated and actual).
22. Total Gross Yardage, (18)+(19)−(20)−(21) (Estimated and actual).
23. Total Net Pay Yardage, (18)−(20)−(21) (Estimated and actual).
24. Average Depth in Feet: a. Overdepth not Dredged (Estimated and actual), b. Non Pay Yardage (Estimated and actual).
25. For Hopper Dredges Only—Actual Total Hauled Yardage.
26. Total Cost (estimated and actual) for each payment item including all settled claims and modifications. (For work performed by Corps plant, the actual total cost for purposes of this report, should not include the plant replacement increment cost item but should include (a) the additional allowance for Retirement, Health and Life Insurance to conform with the requirements of OMB Circular A-76 as revised by Transmittal Memorandum No. 3, (b) the cost allowance of 1¼ percent of base pay to cover compensation for injuries to Government employees under the Federal Compensation Act and (c) interest on the invested capital as per paragraph (f) of ECI I-372. All the above cost items should also be separately identified and shown by their respective individual amounts).
27. Unit Cost for Dredging payment item only (Applicable total cost for dredging payment item in (26) divided by (23)). (Estimated and actual).
28. Total cost to the Corps for supervision and inspection, separately identified; and an indication whether these amounts are included in item (26) both estimated and actual.
29. Total Number and Dollar amount of modifications to contract.
30. Total Number and Dollar amount of claims settled.

31. Total Number and Dollar amount of claims pending.

32. Estimated date for settlement of pending claims.

33. Protests, total number, type and impact. Includes protests of specification provisions, small business set asides, Government estimates or awards.

34. An overall assessment of the dredging work performed including any preaward problems not covered in item (33) of this appendix and post award problems that may have been encountered, such as requests for delays in commencement of work, damage to plant, emergency removal of plant, strikes and other significant work disruptions. The assessment should include information that relates to any adverse impact on navigation traffic that may have resulted from the dredging operations such as: a. Interruptions and Impediments to Navigation Traffic.

(1) Vessel Name, Owner, and total displacement.

(2) Length, beam and draft of vessel.

(3) Nature of cargo.

(4) Number of barges in tow, if applicable.

(5) Reason for and duration of the interruption.

(6) Requirement for and estimated dollar impact of light loading of navigation traffic.

b. Stage or river or tide.

c. Any significant contributory current or wind conditions.

35. In those cases where the Corps dredge is the successful bidder, a report should be furnished the applicable Division Engineer by the District summarizing the nature and content of the Corps estimate. The report should be in sufficient detail so that we will be in a position to respond immediately to any subsequent inquiry as to the equitability of the Corps estimate.

[42 FR 62118, Dec. 8, 1977]

§ 209.155 Expenditure of Federal funds for work sh reward of harbor lines.

(a) Section 5 of the River and Harbor Act of July 13, 1892 (27 Stat. 111; 33 U.S.C. 628), prohibits the expenditure of money appropriated for the improvement of rivers and harbors for dredging inside of harbor lines duly established.

(b) It is not the policy of the Department to expend Federal funds for the removal of wrecks or other obstructions shoreward of established harbor lines.

§ 209.160 The California Debris Commission.

Section 1 of the Act of Congress of March 1, 1893 (27 Stat. 507; 33 U.S.C. 661), created the California Debris Commission, consisting of three officers of the Corps of Engineers, to regulate under the supervision of the Chief of Engineers and direction of the Secretary of the Army, hydraulic mining in the territory drained by the Sacramento and San Joaquin River systems, California. Under section 9 of the act (27 Stat. 508; 33 U.S.C. 669), the individual proprietor or proprietors, or in case of a corporation, its manager or agent appointed for that purpose, owning mining ground in this territory which it is desired to work by the hydraulic process, must file with the Commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by the Commission. The law contains detailed instructions with regard to facts required to be shown by the petitioner and the procedure to be followed by the Commission in issuing an order directing the methods and specifying the manner in which operations shall proceed. Full information on law and procedure can be obtained from the Secretary, California Debris Commission, 650 Capitol Mall, Sacramento, California 95814.

§ 209.170 Violations of laws protecting navigable waters.

(a) *Illegal structures or other work.* (1) Section 9 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401), makes it unlawful to construct any bridge, dam, dike, or causeway over or in any navigable water of the United States until the proper local authority has been obtained and until the location and plans have been approved by the Chief of Engineers and the Secretary of the Army. When plans for any structure have been so approved, it is unlawful to deviate from such plans unless the modification thereof has received the approval of the Chief of Engineers and the Secretary of the Army. Plans of any bridge or causeway now require the approval of the Department of Transportation pursuant to section 6(g)(6)(C) of the Department of Transportation Act (80 Stat. 931).

(2) Section 10 of the River and Harbor Act of March 3, 1899 (30 Stat.

1151; 33 U.S.C. 403), prohibits the creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States, and makes it unlawful to build any wharf, pier, dolphin, boom weir, breakwater, bulkhead, jetty, or other structures, outside established harbor lines or where no harbor lines have been established, or to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The authority of the Secretary of the Army to prevent obstructions to navigation was extended to artificial islands and structures on the Outer Continental Shelf (section 4(f) of the Outer Continental Shelf Lands Act approved Aug. 7, 1953 (67 Stat. 463; 43 U.S.C. 1333(f)).

(b) *Wrecks and similar obstructions.* Section 15 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408), makes it unlawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft, or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels, or to float loose timber and logs or sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation (an Act of Congress approved May 9, 1900, 31 Stat. 172; 33 U.S.C. 410, authorized the Secretary of the Army to prescribe regulations to govern the floating of loose timber and logs and sack rafts and other methods of navigation on any navigable river or waterway of the United States or any part thereof whereon the floating of loose timber and logs and sack rafts is the principal method of navigation). Whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel accidentally or otherwise, it is the duty of the owner to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned. By the maritime law the owner of a vessel which is sunk without fault on his part may abandon the wreck, in which case he cannot be held responsible for removing it. That law has not been changed by the River and Harbor Act approved March 3, 1899, which fully recognizes the owner's right of abandonment. However, a person who willfully or negligently permits a vessel to sink in navigable waters of the United States may not relieve himself from all liability by merely abandoning the wreck. He may be found guilty of a misdemeanor and punished by fine, imprisonment, or both, and in addition may have his license revoked or suspended. He may also be compelled to remove the wreck as a public nuisance or to pay for its removal.

(c) *Injuries to Government works.* Section 14 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408), makes it unlawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works. (The Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest).

(d) *Injurious deposits.* (1) Section 13 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), makes it unlawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited

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either from or out of any ship, barge, or other floating craft, or from the shore, wharf, manufacturing establishment, or mill, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water, or to deposit or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed. Section 13 does not apply to the operations in connection with the improvement of navigable waters or construction of public works considered necessary and proper by the United States officers supervising such improvement or public work.

(2) An Act of Congress approved June 29, 1888 (25 Stat. 209; 33 U.S.C. 441-451), as amended on August 28, 1958 (72 Stat. 970-971; 33 U.S.C. 441-451b) forbids the placing, discharging, or depositing of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbors of New York, Hampton Roads, and Baltimore or its adjacent or tributary waters, within the limits which shall be prescribed by the Supervisor of the Harbor. The provisions of this act are enforced by the Supervisor under the direction of the Secretary of the Army.

(e) [Reserved]

(f) *Penalties for violations.* (1) Section 12 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 406), as amended, provides that every person and every corporation that shall violate any of the provisions of Sections 9 and 10 shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine, imprisonment, or both, in the discretion of the court. The removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General.

(2) Section 16 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U.S.C. 412), provides that every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize or instigate a violation of the provisions of Sections 13, 14 and 15, shall be guilty of a misdemeanor. On conviction thereof violators shall be punished by a fine, imprisonment, or both, in the discretion of the court. Any master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in Section 13 to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of the Army, or who shall willfully injure or destroy any work of the United States contemplated in Section 14, or who shall willfully obstruct the channel of any waterway in the manner contemplated in Section 15, shall be deemed guilty of a violation of the Act. Upon conviction he shall be punished as provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. Any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of Sections 13, 14, and 15 shall be liable for the pecuniary penalties specified in this section, and in addition for the amount of the damages done by said boat, vessel, scow, raft, or other craft. The latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of

libel in any district court of the United States having jurisdiction thereof.

(g) *Enforcement.* (1) Section 17 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413) provides that the Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of Sections 9 to 16, inclusive, of the Act. It shall be the duty of district attorneys of the United States to prosecute vigorously all offenders against the same whenever requested to do so by the Secretary of the Army or by any of his designated representatives.

(2) Under the provisions of Section 17, District Engineers and the United States collectors of customs and other revenue officers, have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by Sections 9 to 16, inclusive, or who may violate any of the provisions of the same. No person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials. Whenever any arrest is made under the provisions of the Act, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him. Such commissioner, judge, or court shall proceed as authorized by law in case of crimes against the United States.

(3) It is the duty of each District Engineer to take notice of any violations of the laws for the protection of the navigable waters and the works of improvement therein that may occur in his district and to take the necessary steps to secure enforcement of the law. Whenever any violation of any of these provisions of law comes to his attention he will investigate carefully the circumstances of the case and will determine the amount of the damage for which the parties committing the violation are responsible under Section 16 of the River and Harbor Act of March 3, 1899. He will advise the responsible parties to remove the illegal structure or deposit or to repair the damage at their own expense within a time specified by him. When there is reasonable doubt as to legal liability or the facts do not appear to warrant legal action, the District Engineer will report the case to the Chief of Engineers for decision before communicating with the responsible parties. When the damage must be repaired within a reasonable time, if the responsible parties so request in writing and if, when considered advisable by the District Engineer to protect the interests of the United States, they furnish a satisfactory bond or other guaranty, he may cause the repairs to be made by employees of the United States and then call upon the responsible parties to pay over to him the cost of the damages when finally ascertained. Where the damage is not to be repaired within a reasonable time, the District Engineer will make final settlement with the responsible parties as promptly as possible by collecting the estimated amount of the damages. All sums so received will be deposited promptly to the credit of the Treasurer of the United States for recredit to the appropriation affected and will be accounted for in the District Engineer's money accounts by proper vouchers. With reference to the method of ascertaining the amount of the damages under Section 16 of the Act, a distinction should be made between cases involving property that should be repaired and those involving property that should be abandoned. In the former cases the amount of the damages should be the total cost of repairs, less any salvage value and any enhanced value. In the latter cases, the amount of the damages should be the fair value of the property, less any salvage value. Whether or not there has been any enhanced value (i.e., whether the fair value of the structure immediately after the repairs is greater than its fair value immediately before the damage occurred) is a matter to be determined from an actual survey of the structure and knowledge of its age and condition. Where maintenance has equalled depreciation there probably would be no enhanced value.

(4) If the parties deny their responsibility, or if they refuse or neglect to remove any unlawful structure or deposit or to repair the damages within

the time specified by the District Engineer, the matter will be reported to the Chief of Engineers with such evidence as the District Engineer may be able to obtain and his recommended action under Section 17 of the Act of March 3, 1899. In a situation requiring immediate action, the District Engineer may report the case directly to the U.S. attorney for the district. The Chief of Engineers will be advised of such action by a written report. Although the Corps of Engineers has certain police powers under this Act it has been the long standing policy to secure compliance with its provisions short of legal proceedings. Accordingly every effort will be made to accomplish corrective measures prior to initiation of action leading to such proceedings. As a general rule, while minor and unintentional or accidental violations of the provisions of the Act need not be reported to the Chief of Engineers, all willful or intentional violations and all cases in which the parties responsible refuse or neglect to remove the unlawful structure or deposit or to make good the damages suffered should be reported promptly to the Chief of Engineers in accordance with the above. It is the policy not to recommend prosecution when the violation of law is trivial, apparently unpremeditated, and results in no material public injury. Each report recommending prosecution should be accompanied by a full statement of the case and copies of correspondence relating thereto.

(5) The procedure in cases involving injurious deposits is similar to that described for other violations of law except that as the damage caused thereby cannot be repaired readily there will be no reason for serving any notice on the parties responsible for the violations further than to bring to their attention the consequences thereof.

(6) Section 6 of the river and Harbor Act approved March 3, 1905 (33 Stat. 1148; 33 U.S.C. 417) provides that expenses incurred by the Corps of Engineers in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examinations into alleged violations of laws for protection and preservation of navigable waters shall be payble from any funds which may be available for the improvement, maintenance, operation, or care of the waterways or harbors affected. If such funds are not available in sums judged by the Chief of Engineers to be adequate, they shall be payable from any funds available for examinations, surveys, and contingencies of rivers and harbors.

[33 FR 18670, Dec. 18, 1968, as amended at 36 FR 17855, Sept. 4, 1971]

§ 209.180 Temporary closure of waterway to navigation.

(a) When an application is received for the temporary closure of a waterway for the construction of a structure or the performance of other work in the waterway, the District Engineer will assure himself of the necessity for the closure and arrange after informal communication with any important navigation interests concerned the time and duration of the closure which will enable the operations to be completed with the least interference with navigation. If there is no question as to the necessity and propriety of the closure, the District Engineer is authorized to inform the applicant as follows: "The Department of the Army will interpose no objection to the closure for a stated period beginning at a specified date: *Provided*, That prior thereto the applicant will notify navigation interests by an advertisement in the press or otherwise as the District Engineer may approve and on the understanding that the waiver of objection does not affect the liability of the applicant for any damages that may arise by reason of the closure." The letter to the applicant will be signed "By Authority of the Secretary of the Army" and distribution made as prescribed for permits.

(b) District Engineers will give careful consideration to the effect of any closure on through navigation. Should coordination with other districts be necessary the case will be forwarded to the Division Engineer for such coordination.

(c) Cases not falling within the authority above conferred will be forwarded to the Chief of Engineers with

the recommendations of the Division and District Engineers.

§ 209.190 Removal of wrecks and other obstructions.

(a) *Laws relative to removal of wrecks and obstructions.* (1) The laws relating to removal of wrecks and contained in Sections 15, 19 and 20 of the River and Harbor Act approved 3 March 1899 and Section 86 of Title 14, United States Code.

(2) As removal by the United States without formal abandonment involves the taking of private property for public purposes, the provisions of the section of law applicable to the particular case must be followed strictly. Removal by the United States is not usually undertaken if the obstruction simply affects the approaches to private wharves or canals and is not obstructing or endangering navigation.

(b) *Reports on accidents or obstructions affecting navigation.* An accident such as a vessel collision, sinking or grounding, or a bridge failure which occurs in navigable waters of the United States and poses a threat to navigation, shall be reported by the District Engineer to HQDA (DAEN-CWO-M), Washington, D.C. 20314 by teletype within 24 hours. Included in the teletype should be a report on the extent of the danger to navigation and an estimate of the duration of the obstruction. When such an accident results in an obstruction to navigation, it shall be immediately reported by telephone to HQDA, Chief, Operations Branch, DAEN-CWO-M. (Exempt under paragraph 7-2o, AR 335-15.)

(c) *General procedure concerning wrecks and other obstructions.* (1) The District Engineer should ascertain, at once, whether navigation is obstructed or endangered, and if the obstruction must be removed, he should inform the owner promptly of the provisions of the law.

(2) Vessel owners, masters and others having any knowledge of wrecks or other obstructions should be encouraged to report their location promptly to the District Engineer.

(3) If the owner commences removal, the District Engineer should supervise the operations sufficiently to insure against unreasonable interference with navigation and see that the removal proceeds diligently. If removal by the United States is necessary, the District Engineer must act promptly. If the owner has not marked the obstruction, the District Engineer should request the local Coast Guard District Commander to do so.

(4) The District Engineer should determine if the United States has a mortgage or other interest in the vessel. If such an interest does exist, he should check with the Maritime Administration or other appropriate agency before offering the vessel for public sale.

(d) *Marking of wrecks by owners.* Whenever a vessel, raft, or other craft is wrecked or sunk in a navigable waterway, accidentally or otherwise, it is the responsibility of the owner to mark it immediately. A buoy or beacon should be used during the day. A lighted lantern is required at night. These marks must be maintained until the sunken craft is removed or abandoned.

(e) *Abandonment of wrecks by owners or underwriters.* (1) Every precaution should be taken in cases involving wrecked or sunken vessels to insure that the rights of the United States are not prejudiced by acceptance of abandonment when tendered by owners or underwriters of vessels under 33 U.S.C. 409. Under no circumstances will acceptance of abandonment be indicated. If a letter of abandonment is received, receipt of the letter should be merely acknowledged and a statement include in the reply as follows: "This acknowledgement should in no way be construed as acceptance by the United States of an abandonment of such vessel, nor as waiver of any right to enforce liability for any damage caused by its sinking or cost of removal." When a notice of abandonment has not been received from the owners or underwriters, or ownership cannot be established, the District Engineer may, after the obstruction has existed for over thirty days, establish abandonment by inserting, in a newspaper nearest the locality of the obstruction, a legal advertisement addressed "To Whom It May Concern" requiring the removal of the obstruction (33 U.S.C. 414).

(2) Should an incident occur involving the interrelated rights and liabilities of persons responsible for a sunken or wrecked vessel, a report should be furnished to HQDA (DAEN-CWO-M), Washington, D.C. 20314 for use in coordinating with the Department of Justice.

(3) In the case of the *United States* v. *Cargo Salvage Corporation*, the United States brought action to obtain legal precedent as to ownership of cargo aboard a wrecked vessel to be removed under 33 U.S.C. 414. The Court held that the interests in cargo are separate and that its abandonment must be independently shown from the abandonment of the hull. In all future cases where the ownership of cargo aboard a wreck to be removed is in doubt, and cannot be otherwise established, the abandonment of the cargo should be established by the insertion of a small advertisement in the county weekly nearest the wreck. Notice of not less than 30 days should be given in addressing the article "To Whom It May Concern."

(f) *Making of wrecks by Coast Guard.* (1) Under 14 U.S.C. 86 the cost of continuing the marking of sunken vessel or other obstruction to navigation, after abandonment is established, shall be borne by the Department of Transportation.

(2) The District Engineer will advise the Coast Guard as soon as practicable if he desires an obstruction marked and will also notify the coast Guard when removal operations have been completed. For regulations of the Coast Guard marking of wrecks, see 33 CFR Part 64.

(g) *Information for Coast Guard.* Whenever the condition of any wreck which has been marked by the Coast Guard changes, due to removal, destruction, changed location caused by storms or shifting channels, or any other reason so that markings are no longer needed, the District Engineer having jurisdiction will notify the District Commander of the Coast Guard at once.

(h) *Removal of obstruction under the provisions of Section 19 of the River and Harbor Act of 1899. (33 U.S.C. 414.)* Action under this section may be undertaken without prior approval of the Chief of Engineers only when the navigation of navigable waters of the United States is obstructed or endangered, and if the obstruction has been in existence over 30 days, or its abandonment by the owner can be legally established in a shorter period. The obstruction can be removed by any method deemed most advantageous provided:

(1) The cost of removal will not exceed $100,000 for each incident.

(2) The wreck is a sunken vessel, boat, watercraft, raft or other similar obstruction.

(3) The wreck is an obstruction to general navigation, not merely an obstruction to a private wharf or canal or merely aesthetically displeasing.

(4) All reasonable efforts have first been exhausted to require the owner to remove the wreck himself within a reasonable period. If this effort is not successful, then removal may be undertaken at Federal expense. The District Engineer should institute steps to recover from the owners the costs incurred. (Wyandotte Transportation v. United States, 389 U.S. 205 88 S.Ct. 379 [1967]). Further, the owner must be advised that the wreck will be removed by the United States with the reservation of all rights of the United States to recover from the owner all expenses of removal.

(i) *Removal of obstructions under provisions of Section 20 of the River and Harbor Act of 1899 (33 U.S.C. 415).*

(1) This section provides that action thereunder may be taken by any Agent of the United States to whom the Secretary of the Army "may delegate proper authority." A delegation of such authority was made by the following order issued by the Secretary of War 20 January 1905.

> Whenever any vessel, boat, watercraft, or raft sinks, grounds, or is unnecessarily delayed in any canal, lock, or other improvement controlled or owned by the United States, or in any navigable waters of the United States, under circumstances of emergency, the officer in charge of such lock, canal, improvement or district will take charge of such vessel, boat, watercraft, raft, or other obstruction with a view to its immediate removal or destruction, using his best judgment in all cases to prevent any unnecessary injury. Any action taken under the above instructions will be reported

forthwith to the Chief of Engineers for the information or action of the Secretary of War.

(2) The above order was amended on 2 November 1917 as follows:

The foregoing order is hereby amended by substituting the word "district engineer" for "officer", with the understanding that the term "district engineer" includes both officers and civilians assigned by competent orders to the charge of a district of the Engineer Department at Large.

(3) The above quoted authority eliminates the necessity for establishing abandonment in emergency cases, but information required by paragraph (k)(2) will be furnished HWDA (DAEN-CWO-M) Washington, D.C. 20314.

(4) Action under this section may be undertaken without prior approval of the Chief of Engineers, subject to the same provisos contained in paragraph (h) of this section.

(j) *Removal of sunken logs.* (1) The United States acquires no property rights in sunken logs through the mere fact that they lie in navigable waters. It is permissible for the original owner to trace and reclaim them, but he should do so within a reasonable time, especially if they obstruct navigation. If the owner fails to exercise his rights to reclaim and remove the obstructing logs, they may be removed by the Government as provided in sections 19 and 20 of the Act approved 3 March 1899. Logs thus removed by the Government may be sold or otherwise disposed of with out liability to the original owner.

(2) When persons known to have no ownership therein or legal title thereto apply for permission to remove sunken logs, it may be assumed that the privilege is desired as a matter of gainful speculation. Ordinarily, they should be advised that the Department of the Army can grant them no property rights to the logs, but will not object to their removing them provided removal operations are so conducted as not to injure or interfere with navigation. In cases, however, where the logs form serious obstruction to navigation and the conditions are such that the Department of the Army would be justified in applying the provisions of the aforesaid Federal laws, there would be no legal objection to permitting private applicants to remove them under an agreement providing that they shall become the property of the applicant. Such cases will be presented to the HQDA (DAEN-CWO-M) Washington, D.C. 20314 before action is taken thereon.

(k) *Authority.* (1) For cases meeting the provisos contained in paragraph (h) of this section, Division Engineers are authorized to approve the expenditure of funds not to exceed the amount of $100,000 per incident and to redelegate this authority to District Engineers.

(2) For cases that require approval of the Chief of Engineers, requests for authority for removal of wrecks and other obstructions will:

(i) Report the case in sufficient detail to establish the propriety allotting public funds to the work.

(ii) Indicate whether removal is proposed under Section 19 or 20 of the River and Harbor Act approved 3 March 1899.

(iii) Include a map, size 8 by 10½ inches, showing the location of the wreck or obstruction in relation to the principal channels in the vicinity and any Federal improvement that may be affected by it.

(iv) Inclose photographs, if necessary, to show exact condition or important details of the wreck or obstruction.

(v) Indicate proposed method of removal; whether by contract or by Government plant and hired labor.

(vi) State the estimated cost of the removal of the wreck or obstruction, including the Government costs if the work is proposed to be done by contract, and the estimated date that allotment of funds will be required. Request allotment for preliminary expenses to cover cost of preparation of specifications and other preliminary details.

(vii) Inclose copy of letter of abandonment when wreck has been formally abandoned, or provide a copy of the public notice, published 30 days prior to the proposed date of removal.

(3) Requests for approval will be submitted to HQDA (DAEN-CWO-M) Washington, D.C. 20314.

(l) *Funds.* (1) cost for removal of wreck approved by the Division Engineer should be charged to the Revolving Fund and a request for reimbursement funds from O&M General should be submitted immediately to HQDA (DAEN-CWO-M) Washington, D.C. 20314. Reimbursement will be dependent upon availability of funds in this office.

(2) Upon completion of the removal of a wreck or other obstruction for which funds have been allotted, any balance remaining will be reported promptly for revocation, citing the date of the allotment.

(m) *Reports (RCS-CONG 1006).* District Engineers will prepare and submit to HQDA (DAEN-CWO-M) Washington, D.C. 20314, through the appropriate Division Engineer the following data by 15 January of each year.

(1) Names of wrecked vessels investigated and removed.

(2) Cost of investigations.

(3) Cost of wreck removals.

The requirement for the tabular report, ENG Form 202e (ER 335-2-5) is hereby rescinded.

[43 FR 22971, May 30, 1978]

§ 209.200 Regulations governing navigable waters.

(a) *Publication of regulations.* (1) Regulations prescribed by or under the direction of the Secretary of the Army to govern navigation and navigable waters, including general, danger zone, restricted area, dumping grounds, fishing and hunting, and navigation regulations, are contained in the Code of Federal Regulations, Title 33, Navigation and Navigable Waters, Chapter II.

(2) District Engineers (or Division Engineers if considered preferable by the latter to avoid duplication in cases where the regulations involved apply to more than one district) will distribute copies of departmental regulations to all known interested parties as soon as their publication has been noted in the FEDERAL REGISTER. In the case of regulations applicable to more than one division, distribution will be handled as agreed upon by the Division Engineers concerned. Under section 4(c) of the Administrative Procedure Act approved June 11, 1946 (60 Stat. 238; 5 U.S.C. 1003(c)), publication in the FEDERAL REGISTER shall be not less than 30 days prior to the effective date except as otherwise provided upon good cause found and published with the regulations. The following note will be included:

> These rules and regulations will be in full force and effect on ————; public notices of their approval were sent to all known interested parties on ————; They have been posted at post offices and other public places.

(b) *Navigation regulations.* (1) Section 7 of the River and Harbor Act approved August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) authorizes the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as public necessity may require for the protection of life and property, or for operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. The statute provides for the posting of regulations and punishment for violations.

(2) Section 6 of the River and Harbor Act approved June 13, 1902 (32 Stat. 374; 33 U.S.C. 499) provides that regulations prescribed by the Secretary of the Army may be enforced as provided in section 17 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413).

(3) District Engineers will take action with respect to regulations prescribed for waterways under their jurisdiction:

(i) To insure that the regulations are brought to the attention of the public.

(ii) To insure that the regulations are properly and fairly administered.

(iii) To recommend any revisions necessary to permit full use of the waterway by the public.

(c) *Danger zones.* (1) The Secretary of the Army has authority to prescribe regulations for the use and navigation of any area of the navigable waters of the United States or waters under the jurisdiction of the United States likely to be endangered by Department of Defense operations. This authority is pursuant to the provisions of Chapter

XIX of the Army Act of July 9, 1918, or of section 7 of the River and Harbor Act of August 8, 1917.

(2) On receipt of a request from any element of the Department of Defense or other agency for approval by the Secretary of the Army of regulations establishing danger zones under authority of either Act, the District Engineer will, prior to issuing any public notice, make certain that the applicant: (i) Has coordinated its proposed operations with any operations being conducted or contemplated by other agencies in the same area with a view to avoiding interagency conflicts, (ii) has obtained clearance from the proper Regional Subcommittee on Airspace, Rules of the Air and Air Traffic Control (Air Coordinating Committee), where the use of airspace is involved, and (iii) has conducted preliminary discussions with local interests when considered advisable. In the case of proposed danger zones off the Atlantic and Pacific Coasts, the coordination referred to in (c)(2)(i) of this section will include the Commander, Service Force, U.S. Atlantic Fleet, or the Commander, Western Sea Frontier.

(3) The authority to prescribe danger zone regulations must be exercised so as not to interfere with or restrict unreasonably the food fishing industry. Whenever the establishment of a proposed danger zone or restricted area may affect fishing operations the District Engineer will consult with the regional director, U.S. Fish and Wildlife Service, Department of the Interior. Two copies of all notices of applications for the establishment of danger zones and restricted areas will be forwarded to the Chief of Staff, U.S. Air Force. In addition, notices of all applications relating to the establishment of aerial gunnery and bombing areas will be sent to local Army, Navy, and Federal Aviation Agency representatives.

(4) If the use of water areas is desired only for such temporary, occasional, or intermittent periods that operations can be conducted safely without imposing restrictions on navigation, applicants may be informed that formal regulations by the Secretary of the Army are not required. However, proper notices for mariners requesting that vessels avoid the areas will be issued by the District Engineer to all interested persons. Copies will be sent to the Commandant, U.S. Coast Guard, Washington, D.C. 20226 and the Commander, U.S. Naval Oceanographic Office, Washington, D.C. 20390.

(d) *Seaplane restricted areas.* (1) Under section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), when required for the protection of life and property, certain areas may be set aside and reserved for the use of seaplanes and attendant craft. Reasonable regulations may be prescribed restricting or prohibiting the use of such areas by other craft.

(2) Section 7(a) of the Air Commerce Act of 1926, as amended (44 Stat. 572; 49 U.S.C. 177(a)) provides, with some exceptions, that the navigation laws of the United States shall not be construed to apply to seaplanes or other aircraft or to the navigation of vessels in relation thereto. The Civil Aeronautics Act of 1938 confers broad powers upon the Commerce Department (Civil Aeronautics Administration), now the Federal Aviation Agency, and the Civil Aeronautics Board in connection with the establishment of landing areas on land or water and other air navigation facilities and the prescribing of rules and regulations to govern the use thereof. Section 601(a)(7) of the Act (52 Stat. 1007; 49 U.S.C. 551(a)(7)) directs the board to prescribe air traffic rules, including rules for the prevention of collisions between aircraft and land or water vehicles. In view of these acts, the Department of the Army does not attempt to regulate the movements of seaplanes and attendant craft within seaplane restricted areas.

(3) In connection with any application or question relating to navigation regulations for the usual forms of water navigation, Division and District Engineers will consider fully the possibility of conflict with the use of the waters by seaplanes. Applicants for permission to utilize navigable waters for seaplane operations not involving action by the Department of the Army under Section 7 of the River and

Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) will be informed to communicate with the appropriate Regional Director of the Federal Aviation Agency.

(e) *Dumping grounds.* (1) Section 4 of the River and Harbor Act of March 3, 1905 (33 Stat. 1147; 33 U.S.C. 419), authorizes the Secretary of the Army to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings and other refuse materials whenever in his judgment such regulations are required in the interest of navigation.

(2) Section 13 of the river and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407) authorizes the Secretary of the Army to permit the deposit of refuse matter in navigable waters, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, within limits to be defined and under conditions to be prescribed by him. Although the Department has exercised this authority from time to time, it is considered preferable to act under Section 4 of the River and Harbor Act of March 3, 1905 (33 Stat. 1147; 33 U.S.C. 419). As a means of assisting the Chief of Engineers in determining the effect on anchorage of vessels, the views of the U.S. Coast Guard will be solicited by coordination with the Commander of the local Coast Guard District.

(3) Under the authority contained in an Act of Congress to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City of June 29, 1888 (25 Stat. 209; 33 U.S.C. 441), the Supervisor of New York Harbor has established dumping areas in those waters and has prescribed regulations for their use. The provisions of the act are enforced by the Supervisor under the direction of the Secretary of the Army.

(4) In considering requests for the establishment of dumping grounds, District and Division Engineers will give careful consideration to the requirements of navigation and will take action to prevent unreasonable injury to fish and wildlife.

(f) *Fishing and hunting structures.* Under Section 10 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403) the Secretary of the Army may prescribe regulations designating water areas wherein fishing and hunting structures may be placed under permits issued by District Engineers. Cases not covered by such regulations must be submitted to the Chief of Engineers for approval.

(g) *Public notice and consultation with interested parties.* (1) When applications are received for the promulgation of regulations as outlined in paragraphs (b)-(f), inclusive, of this section, District Engineers will issue public notices to all parties deemed likely to be interested and specifically to the agencies referred to in these paragraphs. The notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after the actual mailing of the notice. If time is an essential element when adequately explained by the applicant, the District Engineer is authorized to give interested parties a minimum of 10 days after receipt of the notice in which to present protests. A copy of every notice issued will be sent to the Chief of Engineers, Attention: ENGCW-ON.

(2) Copies of the notices sent to interested parties, together with a list of parties to whom sent, will accompany reports on all applications for promulgation of regulations submitted to the Chief of Engineers for necessary action.

(3) In all instances when response to a public notice has been received from a Member of Congress, the District Engineer will inform the Member of Congress of the final action taken on the application.

(h) *Public hearings.* (1) It is the policy of the Chief of Engineers to conduct his civil works activities in an atmosphere of public understanding, trust, and mutual cooperation and in a manner responsive to public needs and desires. To this end, public hearings are helpful and will be held whenever there appears to be sufficient public interest to justify such action. In case of doubt, a public hearing should be held.

(2) Among the instances warranting public hearings are general public opposition to the promulgation of regu-

lations governing the use and navigation of navigable waters. District Engineers will notify the Division Engineer of the need for a hearing, state the proposed arrangements therefor and obtain his concurrence therein. Public hearings will be held in any case when Congressional interests or responsible local authorities make an official and valid request therefor and such action will fulfill the above-stated policy and objectives.

§ 209.220 Flood control regulations.

(a) *Local protection works.* On projects authorized subject to specified conditions of local cooperation, no construction is undertaken by the Department of the Army until satisfactory assurances of the required local cooperation have been accepted by the Secretary of the Army and until any lands, easements, and rights-of-way required to be furnished by local interests have been made available for at least a complete unit of the project. The District Engineers notify local interests concerned of the requirements of local cooperation and request assurances by registered mail prior to the preparation of final plans and specifications. Regulations prescribed by the Secretary of the Army for the maintenance and operation of local flood protection works are contained in § 208.10 of this chapter. When assurances satisfactory to the District Engineer are received, they are forwarded through the Division Engineer to the Chief of Engineers for consideration of the Secretary of the Army. The District Engineers advise local interests of the action taken by the Department. Completed projects or completed useful units thereof are normally turned over to local interests for maintenance and operation as soon as the construction and testing of equipment is completed and the project is in proper condition for the assumption of maintenance and operation by local interests. The transfer is accomplished by formal notice from the District Engineer to the local interests that the completed facilities are being turned over to them for maintenance and operation as of a specific date. During construction, District Engineers keep the local interests concerned advised as to the probable date of transfer.

(b) *Use of storage allocated for flood control or navigation at reservoirs constructed wholly or in part with Federal funds.* Regulations prescribed by the Secretary of the Army in accordance with Section 7 of the Flood Control Act of December 22, 1944 (58 Stat. 890; 33 U.S.C. 709) are for the purpose of coordinating the operation of the flood control features of reservoirs constructed wholly or in part with Federal funds and other flood control improvements to obtain the maximum protection from floods which can reasonably be obtained with the proper operation of all flood control improvements. Proposed regulations are determined by the District Engineer in cooperation with the persons responsible for the maintenance and operation of the reservoir involved after a detailed study of the flood problems and the characteristics of the reservoir project. The proposed regulations are forwarded by the District Engineer through the Division Engineer to the Chief of Engineers for consideration of the Secretary of the Army. When approved by the Secretary of the Army, these regulations are published in Part 208 of this chapter.

§ 209.230 Use of reservoir areas for recreation.

The Department of the Army in accordance with Section 4 of the Flood Control Act of December 22, 1944, as amended by section 4 of the Flood Control Act of July 24, 1946 (60 Stat. 641) prepares and administers plans to obtain the maximum sustained public benefit from the use of reservoir areas under its control for recreation and other related purposes, when such use is consistent with the operation and maintenance of the reservoir project for the specific purposes of the reservoir project as authorized by law and when such use is determined not to be contrary to the public interest. The plans are prepared and administered by the District Engineers, subject to review and approval of the Division Engineers and the Chief of Engineers, in close cooperation with other Feder-

al agencies and local interests. The views and desires of these agencies and local interests are obtained normally by conferences with the District Engineers. In many cases, public hearings are held by the District Engineers at appropriate times in the vicinity of the reservoir area at which time anyone can express his views relative to these plans for consideration of the Department of the Army. Rules and regulations are prescribed by the Secretary of the Army to govern the public use of the reservoir areas in accordance with the law as a part of the master plan for recreational and related uses of the reservoir area. These rules and regulations are published in 36 CFR Parts 311 to 326. Licenses and leases are granted under the law containing conditions and provisions to govern the use of specific portions of the reservoir area. Full information concerning such matters may be obtained from the District Engineer in charge of the reservoir.

§ 209.300 Flood control regulations.

(a) Regulations for the operation and maintenance of local flood protection works approved by the Secretary of the Army under the authority contained in Section 3 of the Flood Control Act of June 22, 1936, as amended and supplemented, are codified as § 208.10 of this chapter. These regulations cover conditions normally and regularly required. Whenever the regulations are not sufficiently broad to cover the specific maintenance and operation requirements of a particular project, District Engineers will submit through the Division Engineers recommended additional regulations needed for that particular project. Such supplemental regulations will require approval of the Secretary of the Army and will be made applicable only to the individual project concerned. Local interests will be advised of the approved regulations for operation and maintenance of local flood protection works at the time assurances of local cooperation are requested. District Engineers will keep informed as to the extent of compliance with approved regulations for operation and maintenance through regular, periodic inspection of the projects concerned and through careful analysis of the semiannual reports which the operating and maintaining agencies are required to submit in accordance with the regulations. The District Engineer's views as to any measures required to conform to the approved regulations will be furnished to the agencies responsible. In any case where the District Engineer has been unable to arrange satisfactory compliance or where there is question or disagreement as to the measures required for compliance, a report of the circumstances, together with the recommendations of the District and Division Engineers, will be submitted to the Chief of Engineers for consideration.

(b) Regulations for the use of storage allocated for flood control or navigation at reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, are contained in § 208.16 et seq. of this chapter.

§ 209.310 Representation of submarine cables and pipelines on Government charts.

The policy of the Corps of Engineers with respect to showing the locations of submarine cables and pipelines on charts published by the Government is as follows:

(a) Within protected waters such as harbors, rivers, bays, estuaries, or other inland waterways, the location of submarine pipelines and cables is to be indicated by shaded areas marked "Pipeline area" or "Cable area" on Government charts issued for general use. The extent of the limits of the area will be governed by local conditions but shall include in all cases the immediate area which overlie the cable or pipeline.

(b) Outside protected waters or in the open sea, as a general rule, the location of the offshore approaches of submarine pipelines and cables should not be indicated on Government charts issued for general use.

(c) Whenever a change is made in the position of any submarine cable or pipeline shown by shaded area on Government charts, or a new cable or pipeline is laid beneath navigable waters at a depth where interference

with navigation or fouling by anchors is probable, the District Engineer will indicate the changed or new location of a copy of the Coast and Geodetic Survey Chart of the locality or on a reproduction made from such chart. The District Engineer will furnish three copies of the chart showing the cable or pipeline location by a shaded area to the Chief of Engineers with his recommendation concerning the designation thereof on Government charts. Ordinarily the shaded area should not exceed more than 500 feet on each side of the location, of the pipeline or cable except on the very small scale charts where an area of that width would not be of sufficient prominence. The shaded area will be designated "Cable area" or "Pipeline area", as the case may be, but no other information as to the character or ownership of the installation will appear on the chart.

(d) Cables and pipelines laid at sufficient depths below the beds of waterways to prevent interference with navigation or fouling by anchors are not required to be shown on Government charts and report thereon is not necessary.

§ 209.315 Public access to navigation works.

While the regulations prescribed by the Secretary of the army for various navigation improvements usually strictly prohibit trespass on Government property, those regulations will not be construed as prohibiting access to navigation works of general public interest subject to the following criteria:

(a) The public will not be permitted in areas where their presence would subject themselves or Government operating personnel to serious accident hazards.

(b) The public will not be permitted in areas where their presence would interfere with any phases of navigation operations.

(c) The public will be given access to all areas other than those specified under paragraphs (a) and (b) of this section, subject only to the normal legal requirements with respect to property and personal rights.

§ 209.320 Policy on release of commercial statistics.

The collection of commercial statistics pertaining to rivers, harbors, and waterways, and annual reports thereof to Congress, are required by the River and Harbor Act of June 23, 1866 (14 Stat. 70), the act of February 21, 1891 (26 Stat. 766), the River and Harbor Act of June 13, 1902 (32 Stat. 376), the River and Harbor Act of July 25, 1912 (37 Stat. 201), the River and Harbor Act of September 22, 1922 (42 Stat. 1043), and Pub. L. No. 16, February 10, 1932 (47 Stat. 42). It is the policy of the Department to hold in strict confidence any data or information which has been furnished by shippers and others upon the understanding that it will not be disclosed and will only be used in the compilation of port or waterway statistics. In case Federal or State agencies or local interests request other than general information made permissible hereunder, their attention will be called to the policy indicated in this section.

§ 209.325 Navigation lights, aids to navigation, navigation charts, and related data policy, practices and procedure.

(a) *Purpose.* This regulation prescribes the policy, practice and procedure to be used by all Corps of Engineers installations and activities in connection with aids to navigation, chart data, and publication of information on Civil Works activities.

(b) This regulation will be applied by all elements of the Corps of Engineers with Civil Works responsibilities.

(c) *Reference.* Public Law 85-480, Publication Authority (72 Stat. 279).

(d) *Cooperation with Coast Guard.* (1) District Engineers will consult with the Coast Guard District Commander during design of channel and harbor improvement projects to discuss the aids to navigation requirements and all other facets of the projects that involve Coast Guard responsibility. Project material furnished direct to Coast Guard Commanders will include:

(i) Information as to the authorization by Congress of a project involving changes affecting aids, such as channel limits, breakwaters, including a copy of the project document;

(ii) The proposed operations on such projects during the next fiscal year, to be furnished annually on the release of the budget estimates;

(iii) Plans showing the final location of the channel limits or structures to be furnished at the time work is undertaken.

(2) Changes in channel limits affecting navigation aids, made under general or specific provisions of the law, should be made the subject of a conference with the Coast Guard District Commander. He will be promptly informed as to the approval of such changes and the probable date of completion of the work.

(3) District Engineers will furnish direct to the various Coast Guard District Commanders, for their immediate information, any facts which may come to their attention in connection with their duties which will be of benefit to the Coast Guard in maintaining its system of aids to navigation. This should include statements as to the displacement of or defects in any such aids to navigation.

(4) If work involving harbor or channel improvements directly affects any existing aids to navigation or any structures of the Coast Guard, Districts Engineers will, when practicable, give notice to the Coast Guard District Commander sufficiently in advance to permit taking such steps as may be deemed necessary by the Coast Guard. If the Coast Guard District Commander specifically requests that the affected structure be replaced, the District Engineer will inform him of the estimated cost and will proceed with the work if so authorized by the Chief of Engineers. On completion of the work, the District Engineer will promptly furnish the Coast Guard District Commander, for settlement, an account of the expense incurred.

(e) *Navigation Aids of the Corps of Engineers.* (1) Whenever channel dredging or other channel improvements are being performed, necessary temporary markers, such as ranges and light poles, should be installed and maintained by the District Engineer pending the installation of permanent aids by the Coast Guard. The Coast Guard desires that information regarding aids to navigation installed or maintained by District Engineers in connection with harbor or channel improvement be furnished promptly. Such information is needed for inclusion in Notice to Mariners as published by the Coast Guard, and where desirable on the charts of the waters concerned.

(2) District Engineers will notify the Coast Guard District Commander in every case where aids to navigation for marking works of harbor or channel improvements are established or discontinued. Notice should be given of such aids as may be of use or interest to general navigation. Notice need not be given as to such buoys, lights, or fog signals as are of temporary or unimportant character, or of importance only to the Corps of Engineers. Omit also lights or fog signals on ferry slips and on piers used only by certain vessels, and stakes, bushes, and barrel buoys marking shallow and little-used channels.

(3) In placing aids to navigation in connection with harbor or channel improvement works, District Engineers should see that they do not conflict in character or otherwise with other aids to navigation in the vicinity. District Engineers should confer with the Coast Guard District Commander on this subject.

(4) The necessary blank forms for reporting information regarding Corps of Engineers aids will be furnished upon request by the Coast Guard District Commander.

(5) It is essential that the Coast Guard by furnished with information for publication concerning markers installed by the Corps of Engineers as temporary aids to navigation, for new improvements, in advance of permanent aids, and also concerning other markers that may be established in connection with Corps of Engineers operations that may also serve as important aids to navigation. Care will be exercised to see that all markers established are not misleading to general navigation and do not interfere with aids to navigation estabished by the Coast Guard.

(f) *Colors of dredging buoys established by Corps of Engineers.* (1) In order to distinguish buoys placed and maintained by the Corps of Engineers

for dredging purposes from aids to navigation placed by the Coast Guard, Corps buoys will be painted white with the top 2 feet painted light green.

(2) If buoys with special markings are needed to indicate the different sides of the navigable channel, prior arrangements will be made with the Coast Guard District Commander having jurisdiction.

(g) *Information to be furnished by the Corps of Engineers.* (1) District Engineers responsible for harbors and waterways shown on charts of the National Ocean Survey (NOAA), will report the channel conditions promptly, using standard tabular forms, to:

Director, Defense Mapping Agency, ATTN: Hydrographic Center, Washington, D.C. 20390.

National Oceanic and Atmospheric Administration, ATTN: National Ocean Survey C-32, Rockville, Md. 20852.

Commandant and District Commanders, U.S. Coast Guard.

(2) Channel survey drawings furnished to the Coast Guard are to include:

(i) Either NAD 27 or State Plane grids.

(ii) Plots of the positions of aids to navigation.

(iii) Written notations of the coordinates in NAD 27 or State Plane Coordinates of the fixed aids to navigation found during the survey.

(3) The standard tabular forms with illustrated data follow:

(i) For channels 400 feet wide and greater (ENG Form 4020-R).

(ii) For channels 100 to 400 feet wide (ENG Form 4021-R).

[———— Harbor, ———— (State)]

Name of channel	Date survey	Project			Minimum depths in channel entering from seaward		
		Feet width	Miles length	Feet depth	Left outside quarter feet	Mid-channel for half project width feet	Right outside quarter feet
Kings Island Channel	3-78	300	1.14	26	24	23	26
Whitehall Channel	3-78	200	1.81	26	27	26	25

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(iii) For channels less than 100 feet in width, report controlling depths only based on at least 80 percent of project width, 40 percent on either side of centerline. (The submission of tabular forms is not required for channels having a project depth less than 10 feet except coastal inlets and harbors of refuge.)

(4) The tabulations of depths should be amplified by footnotes or otherwise to show clearly and definitely the location of controlling shoals, tendency of shoals to recur, and all other critical information of special value and importance for safe navigation of the channel. Reaches of channel not presently named should be identified in the tabular form by reference to chartered aids or features, or assigned identifying names, numbers or letters. For localized irregular project areas where the application of the tabular form would not be practical, the controlling depth based on a safe navigable width will be described as well as unusual or critical conditions of shoaling.

(5) The prompt dissemination of the latest detailed information concerning channel conditions is of utmost importance, and necessary measures will be taken to insure that such information is reported without delay simultaneously to the U.S. Naval Oceanographic Office, the Coast Guard, the National Ocean Survey and Defense Mapping Agency. When a dangerous shoaling is found during the progress

of a survey, information thereon will be furnished immediately to the above-mentioned agencies, so that such information may be made available to mariners promptly, and buoys shifted to mark the shoal. Descriptions of any dredging or other operations in important channels in tidal waters—either in progress and not already reported, or soon to be undertaken—together with a statement of the work and expected duration, will also be reported in order that Naval and other vessels may be warned to look out for dredges and other plant, temporary markers and lights.

(6) District Engineers having charge of improvements of harbors and waterways shown on charts of the Defense Mapping Agency or of the National Ocean Survey will send to both offices promptly, as ascertained for the correction of such charts, the following information: Descriptions of changes in channel location and depth, or of obstructions that may be discovered, with such prints and other information as may be necessary to permit the existing charts to be corrected to date. All maps should contain sufficient data to permit the fixed plane or reference, bench marks, base lines, etc., to be determined and located. The survey stations should be shown and, when no unreasonable expenditure of time or labor is involved, the map will show one or more triangulation station(s) of the National Ocean Survey in such a way as to facilitate connection of old or new work. The source of authority for the shoreline and topography should be stated on the map. The data supplied should indicate what charts are affected.

(7) When any survey of areas covered by charts of the Defense Mapping Agency or the National Ocean Survey is completed, a print of each tracing will be sent direct to both the Defense Mapping Agency and the National Ocean Survey. It is not necessary that tracings be fully complete as to form and title when such prints are made. An informal manuscript title marked "Advance Sheets", and containing a description sufficient to identify the locality and to identify the source of the map, will be sufficient.

(8) Information relative to the improvement of harbors and waterways such as dredging operations, and precautions rendered necessary due to the presence of dredging or other plant will, when considered necessary, be brought to the attention of vessel owners or operators regularly using the waterway. This will be done through issuing bulletins or notices by District Engineers.

(h) *Special Reports.* Changes affecting navigation will be made promptly whenever information of immediate concern to navigation becomes known. Items of information especially desired are channel conditions as revealed by surveys, changes in channel conditions, either by natural causes or by dredging or other work, changes in approved projects for improvement with statements of results expected from proposed operations, descriptions of proposed dredging or other Federal work of improvement such as breakwater, pier, and revetment construction or alterations, descriptions of proposed or completed municipal or private improvements in or affecting navigable waters. Additional items of information desired are descriptions of wrecks, uncharted shoals, and other obstructions to navigation and particulars as to proposed or completed removal of same, changes in buoys or lights, erection of new, or changes in existing bridges, new or revised Federal or local rules and regulations for harbors and channels, and establishment or existence of danger areas in navigable waters. Reproductions of drawings or sketches which will be helpful in interpreting the data shall accompany the reports. The reports will not be limited to a reference to an accompanying drawing or sketch, but will contain a complete description in form suitable for publication in notices to mariners and the monthly supplements to the U.S. Coast Pilot. In this respect, the reports will provide enough information that a single notification to navigational interests will suffice. In the case of dredging or construction work, the bare statement that work will commence or has commenced on a certain date is insufficient. All additional information possible, such as probable duration of oper-

ations and object of work, will be given—the latter in the case of dredging being such data as the area to be covered and the depth expected to be provided. The reports required by this paragraph will be identified by reference to the appropriate Engineer Manual or regulation and will be numbered consecutively by each District during the calendar year, starting with number 1 at the beginning of each year.

(i) *Information pamphlets, maps, brochures and other material.* (1) Public Law 85-480, approved 2 July 1958, authorizes the Chief of Engineers to publish information pamphlets, maps, brochures, and other material on river and harbor, flood control, and other Civil Works activities, including related public park and recreation facilities under his jurisdiction, as he may deem to be of value to the general public.

(2) This Public Law authorizes the Chief of Engineers to provide for the sale of any of the material prepared under authority of the act—and of publications, charts, or other material prepared under his direction pursuant to other legislative authorization or appropriation, and to charge therefor a sum of not less than the cost of reproduction.

(3) District Engineers are authorized to publish the material covered in paragraph 8a above, and to sell such material. Except for material specifically prepared for free distribution to the general public, the charges for such other published information will be not less than the cost of its reproduction.

(4) Condition survey maps or charts, sold or otherwise distributed to the public, showing depths will specifically state the date or dates that the surveys were made. They shall also have the following notation printed or stamped thereon:

"The information depicted on this map represents the results of surveys made on the dates indicated and can only be considered as indicating the general conditions existing at that time."

[43 FR 19661, May 8, 1978]

§ 209.330 U.S. Lake Survey Office.

The U.S. Lake Survey Office performs the service of surveying and charting, for navigation purposes, the Great Lakes and connecting streams as far down the St. Lawrence river as the international boundary at St. Regis, 66 miles above Montreal. This work is confined to U.S. territory, except for the depiction of such Canadian waters and shores as may be essential to the integrity and usefulness of charts showing localities contiguous to the boundary and those covering a whole lake or river. Associated with its operations on the Great Lakes, the Lake Survey publishes charts of Lake Champlain and of the natural navigable waters of the New York State canal system. It is also charged with the preparation of charts of the Lake of the Woods and Rainy Lake. The charts undergo constant revision to show changes in aids to navigation and other important features. A catalogue of the charts, outlining areas covered, scales, prices, and conditions of sale, may be had by applying to the U.S. Army Engineers District, Lake Survey, 630 Federal Building, Detroit, Mich. 48226. A bulletin revised annually to supplement the information given upon the charts may also be purchased at the Lake Survey Office.

§ 209.335 Publication.

(a) Section 4 of the Administrative Procedure Act requires publication of general notice of proposed rule making in the FEDERAL REGISTER (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law), except to the extent that there is involved: (1) Any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. Except where notice of hearing is required by statute, this requirement does not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief

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statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) General notice of proposed rule making published in accordance with the above will include: (1) A statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

§ 209.340 Laboratory investigations and materials testing.

(a) *Purpose.* The purpose of this section is to define and establish policies and procedures applicable to the performance of investigations and tests at Corps of Engineers laboratory installations for other governmental agencies and private organizations.

(b) *Applicability.* This regulation applies to Corps of Engineers Divisions and Districts operating soils, concrete, water quality and hydraulic laboratories, and to the Inter-Agency Sedimentation Project.

(c) *References.* (1) AR 37-20.

(2) AR 37-27.

(3) ER 1-1-6.

(4) ER 10-1-3, Appendix XIII.

(5) ER 1110-1-8100.

(6) ER 1140-2-303.

(d) *Policy.* Subject to the authority limitations contained in paragraph (f) of this section, laboratory investigations and materials testing may be performed for other agencies of the Federal Government, State and local units of government, foreign governments and private firms under the following conditions:

(1) The work will be performed on a cost reimbursable basis.

(2) Work may be performed for State and local units of government, foreign governments or private firms only when it is firmly established that private commerical laboratory facilities capable of performing such work are not available, or because of location or for other reasons it is clearly impractical to utilize such private commerical laboratory services. The requesting entity must further certify that such services cannot be procured reasonably and expeditiously through ordinary business channels.

(3) Performance of the work will not interfere with provisions of services essential to the mission of the Corps.

(4) Performance of the work will not require an increase in the permanent staff of the facility.

(5) Performance of the work will not require expansion of normal facilities.

(6) The work is within the scope of authorized activities of the laboratory at which the work is to be performed.

(7) Performance of the work will not be adverse to the public interest.

(8) Prior to undertaking laboratory investigations or materials testing for private firms, written certification will be obtained from such firms stating that the results of the work will not be used in litigation or for promotional purposes.

(e) *Terms of providing reimbursement for work performed.* (1) *Federal agencies.* Reimbursement for work for the Department of Defense, the Department of the Army, and other Federal Agencies will be in accordance with the procedures prescribed in AR 37-27.

(2) *State and local units of Government.* Funds to cover the total estimated cost of the work or an initial increment of the esitmated cost based on an approved schedule of payment will be deposited with the installation performing the work before any obligations or expenses in connection with the work are incurred; and when funds are being deposited on an approved schedule no obligations or expenses will be incurred in connection with the work in excess of funds on deposit.

(3) *Private concerns and foreign governments.* Funds will be deposited in advance of the work as required in paragraph (e)(2) of this section. Charges shall include a surcharge of 15 percent of all applicable costs, except under the following conditions.

(i) When the final product will directly contribute to a specific planning, design, or construction activity which derives its principal support from Federal funds in the form of a grant or otherwise.

(ii) Where an exception is granted based on a direct benefit to the Gov-

ernment. Adequate justification, outlining the direct benefits which are expected to accrue to the Government, will be forwarded to HQDA (DAEN-CWE-DC) Washington, DC 20314, for review and approval prior to deletion of the surcharge.

(f) *Authority.* The following delegations of authority to perform laboratory investigations and materials testing apply.

(1) *Division materials laboratories.* Division Engineers are delegated the authority to approve laboratory work for Federal, State and local units of government when the total estimated cost of each investigation or test project is $15,000 or less. Division Engineers are also delegated the authority to approve laboratory work for private firms and foreign Governments when the total estimated cost of each investigation or test project is $5,000 or less. Approval is required when the estimated or actual costs exceed those delegations of authority. Requests for approval shall be addressed to DAEN-CWE-DC.

(2) *Hydraulic laboratories.* Division Engineers and District Engineers operating hydraulic laboratories or hydraulic model laboratories are delegated the authority to approve laboratory work for others within the same limitations and in accordance with the same procedures as apply to Division Materials Laboratories.

(3) *Inter-Agency Sedimentation Project, St. Anthony Falls Laboratory, University of Minnesota, Minneapolis, Minnesota.* The District Engineer, St. Paul is authorized to perform work required in procurement, testing and calibration of specialized sediment sampling equipment developed at the Inter-Agency Sedimentation Project. Equipment of this nature will be made available to Federal, State and local governmental agencies at cost. The District Engineer, St. Paul, is also authorized to approve the performance of testing and calibration work for U.S. private firms that fabricate this specialized equipment for commercial sale when the estimated cost for services of Corps personnel is $5,000 or less for a single order. Approval is required when the estimated single order cost for a private firm exceeds $5,000 and when the total cost of work during a fiscal year for any one private firm exceeds $15,000. Requests for approval shall be addressed to HQDA (DAEN-CWE-HY) Washington, DC 20314.

(g) *Reports of testing results.* Final reports of results will be submitted in accordance with instructions provided by the sponsoring organization, with two copies to HDQA (DAEN-CWE-DC) Washington, DC 20314.

Copies of reports of scientific or technical activities will be transmitted to the Defense Documentation Center as required by AR 70-31. (RCS OSD-1366)

(Sec. 3012, 70A Stat 157; 10 U.S.C. 3012)

[44 FR 50338, Aug. 28, 1979]

§ 209.345 Water resource policies and authorities.

REIMBURSEMENT FOR ADVANCE NON-FEDERAL PARTICIPATION IN CIVIL WORKS PROJECTS

(a) *Purpose.* This regulation gives general instructions on use of section 215 of the Flood Control Act of 1968 (Pub. L. 90-483) to reimburse a non-Federal public body for construction of part of an authorized Federal project, part of an authorized Federal project. It establishes general policies, outlines procedures to be followed in reaching an agreement with an eligible non-Federal entity, and provides guidance on the provisions of such an agreement. All authorized projects are subject to this Act and regulation.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) Section 215, FCA of 1968 (Pub. L. 90-483, 42 U.S.C. 1962d-5a.). (APP A, this regulation).

(2) Senate Document No. 10, 90th Congress, 1st Session, "Study of Federal Reimbursement Policy for Work by States and other Non-Federal Entities on Authorized Water Resources Projects."

(3) Section 221, FCA of 1970 (Pub. L. 91-611, 42 U.S.C. 1962d-5b).

(4) ER 405-2-680.

(5) ER 1140-2-301.

(6) ER 1180-1-1, (para. A-310, App. A).

(d) *General policy.* (1) The specific limitations put upon the allotment of funds authorized by section 215 indicate that only limited use should be made of the authority. It will, therefore, be Corps of Engineers policy to restrict the use of this authority to cases that meet all of the following conditions: (i) The work, even if the Federal Government does not complete the authorized project, will be separately useful or will be an integral part of a larger non-Federal undertaking that is separately useful; (ii) the work done by the non-Federal entity will not create a potential hazard; (iii) approval of the proposal will be in the general public interest; (iv) only work commenced after project authorization and execution of an agreement pursuant to this Regulation will be eligible for reimbursement or credit; (v) proposed reimbursement will not exceed the amount that the District Engineer considers a reasonable estimate of the reduction in Federal expenditures resulting from construction of the project component by the non-Federal entity.

(2) Before finally approving any agreement under section 215, the Chief of Engineers will inform the Secretary of the Army and the Chairman (Senate and House), Subcommittee on Public Works, Committee on Appropriations of the proposed arrangements. The Chief of Engineers will not sign an agreement until Secretarial and Committee concurrences are obtained.

(3) Section 215 authority will not be used where it might appear to circumvent the intent of Congress. It will not, for example, be used to initiate work on projects to which Congressional committees have indicated general opposition or refused to provide requested funds, or to accelerate portions of work on which construction has already been commenced by the Federal Government.

(4) Section 215(f) authorizes a specific allotment of funds to reimburse non-Federal entities for work accomplished under the Section. No allotment has been established, nor is one proposed at this time. Until one is, and firm procedures are established, any agreement with a non-Federal entity shall call for reimbursement, or for credit against required contributions, only when construction funds for the Federal project which incorporates the part constructed by the non-Federal entity are appropriated and allocated.

(5) The non-Federal entity will normally be required to develop the design memorandum, engineering plans, and specifications for the work it proposes to undertake. Subject to policies established in ER 1140-2-301, as modified in paragraph (e)(2) of this section, the District Engineer may provide engineering services with funds advanced by the non-Federal entity if he determines it to be impracticable for the entity to obtain the services elsewhere. Non-Federal engineering and overhead costs for the part of the Federal project that the non-Federal entity proposes to construct will be part of the reimbursement agreement.

(6) The agreement shall include local cooperation items required by the project authorization and by Section 221, FCA of 1970.

(7) Reimbursement of non-Federal work under Section 215 is not applicable to small projects authorized under the general authority of Section 107, Pub. L. 86-645, as amended. (33 U.S.C. 577); Section 205, Pub. L. 858, 80th Congress, as amended, (33 U.S.C. 701s); and Section 103, Pub. L. 87-874, as amended, (33 U.S.C. 426g); and Section 14, Pub. L. 79-526 (33 U.S.C. 701r).

(e) *Procedures.* (1) Non-Federal entities desiring reimbursement under Section 215 for constructing part of an authorized Federal project should confer with the District Engineer and submit a written proposal to him. This proposal will form the basis for consulting, as needed, with OCE and for deciding whether the proposal meets the policy criteria of paragraph (d) of this section, and whether to continue under the procedures below and what sequence to follow.

(2) If Federal preconstruction planning funds are not available to the project and it is considered impractical for the non-Federal entity to prepare a partial design memorandum and/or plans and specifications, the draft agreement may propose that this work

be accomplished by the Corps of Engineers through an advance of non-Federal funds for this purpose. Certain advances of funds will be necessary, in any event, to cover other costs which are required on the part of the Corps of Engineers. Paragraph 11 of ER 1140-2-301 requires that requests to the Appropriations Committees for approval of advances of funds should normally be submitted to the Committees by non-Federal interests outside of Corps of Engineers channels. An exception to this procedure will be made in the case of Section 215 proposals in that the request for approval of advances will be made a part of the request to the committees for approval of the overall arrangement referred to in paragraph (d)(2) of this section. Thus, proposed advances of funds for the following purposes will be clearly set forth in the draft agreement: (i) Preparation of a partial design memorandum and/or plans and specifications (ii) corps review of design scheduled for accomplishment by local interests, and (iii) periodic and final inspections.

(3) The District Engineer will submit for review an unsigned draft agreement to OCE. All agreements will be prepared for the signature of the Chief of Engineers.

(4) The District Engineer will be notified of any changes in the draft agreement that the Chief of Engineers may require, and will negotiate a final agreement with the non-Federal entity. After signature of the agreement by the non-Federal entity, the District Engineer will forward three copies to HQDA (DAEN-CWO-C) WASH DC 20314, for signature by the Chief of Engineers.

(5) Upon receipt from OCE of the full executed agreement, the District Engineer will transmit the signed agreement to the non-Federal entity.

(6) The Division Engineer will review the (partial) design memorandum, and, if it meets the relevant criteria in paragraph (d)(1) of this section, will submit it to OCE with the recommendations on whether or not the work may proceed subject to reimbursement under the agreement.

(7) The Division Engineer will approve plans and specifications.

(8) The non-Federal entity will award contract.

(9) The District Engineer will conduct periodic and final inspections.

(10) Upon completion of the local work, the District Engineer will certify the cost data, and that performance has been in accordance with the agreement.

(f) *Agreements.* Agreements under Section 215 should follow the general format presented in paragraph (c)(6) of this section, adapted as warranted by the specific case. Each agreement shall:

(1) Expire 3 years after the date of execution if the non-Federal entity has not commenced the work contemplated by the agreement.

(2) State the time allowed for completion of the work. A reasonable time shall be allowed, but normally not over 2 construction seasons.

(3) Fully describe the work to be accomplished by the non-Federal entity and specify the manner in which it will be carried out.

(4) The agreement will specify that reimbursement by the Federal Government will not exceed $1,000,000.

(5) Provide for necessary review of designs, plans, and specifications, by the District Engineer.

(6) Provide for examination and review of proposed contracts and for inspection of the work by the District Engineer for conformance with the terms of the agreement.

(7) State fully the basis on which reimbursement or credit shall be determined, and provide for the final adjustment when the balance of the Federal project is constructed. If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(8) State that such reimbursement shall depend upon appropriation of funds applicable to the project and shall not take precedence over other pending projects of higher priority.

(9) Specify that reimbursement or credit for non-Federal work shall apply only to that work undertaken after execution of the agreement. The term "work" shall include advance en-

gineering and design as well as actual construction.

(10) State that the agreement is not to be construed as committing the United States to reimbursement if the Federal project is not undertaken, or if the Federal project should be modified in such a way that the work performed by the non-Federal entity does not constitute a part thereof.

(11) Contain applicable equal employment clauses from Armed Services Procurement Regulations.

(g) *Nature and amount of reimbursement.* (1) The non-Federal entity may be reimbursed by a payment of cash, or, preferably, by reductions in any non-Federal contribution to the Federal project that may have been required by the legislation authorizing it, or by a combination of cash and such reductions.

(2) The amount of reimbursement shall equal the approved expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the Corps of Engineers, and as covered in the agreement under paragraphs (f)(7) and (f)(10) of this section. The amount of reimbursement will not exceed, however, the amount that the District Engineer finds to be a reasonable estimate of the reduction in Federal expenditure resulting from construction by the non-Federal entity.

APPENDIX A—PUBLIC LAW 90-483, 90TH CONGRESS, S. 3710, AUGUST 13, 1968

An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purpose. (82 Stat. 731).

* * * * *

Sec. 215. (a) The Secretary of the Army, acting through the Chief of Engineers, may, when he determines it to be in the public interest, enter into agreement providing for reimbursement to States or political subdivisions thereof for work to be performed by such non-Federal public bodies at water resources development projects authorized for construction under the Secretary of the Army and the supervision of the Chief of Engineers. Such agreements may provide for reimbursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed $1,000,000.

(b) Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken or Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) No reimbursement shall be made, and no expenditure shall be credited, pursuant to this section, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is requested has been performed in accordance with the agreement.

(d) Reimbursement for work commenced by non-Federal public bodies no later than one year after enactment of this section, to carry out or assist in carrying out projects for beach erosion control, may be made in accordance with the provisions of section 2 of the Act of August 13, 1946, as amended (33 U.S.C. 426f). Reimbursement for such work may, as an alternative, be made in accordance with the provisions of this section, provided that agreement required herein shall have been executed prior to commencement of the work. Expenditures for projects for beach erosion control commenced by non-Federal public bodies subsequent to one year after enactment of this section may be reimbursed by the Secretary of the Army, acting through the Chief of Engineers, only in accordance with the provisions of this section.

(e) This section shall not be construed (1) as authorizing the United States to assume

any responsibilities placed upon a non-Federal body by the conditions of project authorization, or (2) as committing the United State to reimburse non-Federal interests if the Federal project is not undertaken or is modified so as to make the work performed by the non-Federal Public body no longer applicable.

(f) The Secretary of the Army is authorized to allot from any appropriations hereafter made for civil works not to exceed $10,000,000 for any one fiscal year to carry out the provisions of this section. This limitation does not include specific project authorizations providing for reimbursement.

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[42 FR 24050, May 12, 1977]

PART 210—PROCUREMENT ACTIVITIES OF THE CORPS OF ENGINEERS

Sec.

210.1 Advance notice to prospective bidders.
210.2 Notice of award.
210.3 Notice to proceed.
210.4 Rules of the Corps of Engineers Board of Contract Appeals for cases not subject to the Contract Disputes Act of 1978.
210.5 Rules of the Corps of Engineers Board of Contract Appeals for cases subject to the Contract Disputes Act of 1978.

AUTHORITY: Secs. 2301-2314, 3012, 70A Stat. 127-133, 157; 10 U.S.C. 2301-2314, 3012.

§ 210.1 Advance notice to prospective bidders.

In connection with all construction contracts estimated to cost $100,000 or more for which an invitation is scheduled to be issued, an advance notice to prospective bidders will be prepared sufficiently in advance of the actual issuance of the invitation to stimulate interest on the part of the greatest possible number of contractors. Advance notices may also be prepared on projects estimated to cost less than $100,000 and for supplies where considered desirable. ENG Form 3132-R or ENG Form 3133-R [set out in paragraphs 205 and 206, Appendix A, Engineer Contract Instructions (ER 1180-1-1)] will be used to send advance notices to prospective bidders. Lengthy notices may be reproduced and mailed using ENG Form 3133-R as a foldover wrapper fastened with a wire staple. Advance notices will contain the information required by ENG Form 3132-R, but additional information may be added as appropriate. The advance notices will:

(a) Describe the proposed work in sufficient detail to permit prospective general contractors, subcontractors and suppliers to determine reasonably whether the work is of a nature and volume to warrant their buying plans;

(b) Specify the date by which bidders should return the request card in order to receive a complete bid set;

(c) State the various locations (offices) where plans will be on public display, available for inspection without charge; and

(d) Include for construction contracts a statement as to the approximate value of the proposed construction. That statement of value shall be in increments as follows: (1) Less than $25,000; (2) the nearest multiple of $25,000 up to $100,000; (3) the nearest multiple of $100,000 from $100,000 to $1 million; (4) the nearest multiple of $500,000 for from $1 million to $10 million; (5) over $10 million for all projects of greater estimated value.

Information on several projects for which invitations are scheduled to be issued may be grouped in one advance notice provided that information on any project or projects is not unduly delayed in order to be grouped with others. When an advance notice is used to circularize bidders, copies of the invitation, when issued, will be furnished only to those prospective bidders who have returned a request card indicating a desire to submit a bid.

[26 FR 11732, Dec. 7, 1961]

§ 210.2 Notice of award.

The successful bidder will be notified in writing of the acceptance of his bid. Under construction contracts, this notice may accompany the contract papers which are forwarded for execution. To avoid error, or confusing the notice of award with a notice to proceed, the notice of award will be substantially in the following format:

You are hereby notified that your bid dated ———— in the sum of $——cover-

ing ———— is accepted. A formal contract will be prepared for execution. Acceptable performance and payment bonds (if required) must be furnished upon execution of the formal contract. If approval of the contract is required by its express terms, the contract is not fully executed until such approval is obtained.

Under supply contracts a written award mailed (or otherwise furnished) to the successful bidder either on Standard Form 26 or Standard Form 33, results in a binding contract without further action by either party.

[26 FR 11732, Dec. 7, 1961]

§ 210.3 Notice to proceed.

(a) *General.* When the contract specifies the time when the contractor is to proceed with the work under the contract, a notice to proceed will not be required. However, in any case where the contract requires the issuance of a notice to proceed the notice will fix the time for the commencement of the work and also, if appropriate, will fix the time for the completion of the work. The notice to proceed should be issued on a form letter, reproduced on local letterhead paper from a master copy, which will preclude repetitive typing of stereotype data. The notice to proceed will be executed in a sufficient number of copies to meet the contract distribution requirements in paragraph 30-206, Engineer Contract Instructions (ER 1180-1-1), and will bear the contract number in the upper right-hand corner of the notice.

(b) *Contractor's acknowledgment.* When a notice to proceed is issued, the contractor will acknowledge receipt thereof by signing and dating all copies of the acknowledgment and returning all but one copy to the contracting officer.

(c) *Proceeding before approval of bonds.* It is not necessary to delay commencement under the contract pending approval of bonds by The Judge Advocate General. Such action will be at the discretion of the contracting officer. In the event exceptions are taken to the bonds the contractor will immediately take steps to remove such exceptions or submit new bonds.

(d) *Commencing performance.* Contractors in no case will be required to commence performance prior to the commencement date fixed in the contract or in the notice to proceed. If they voluntarily do so and the contract is not ultimately signed, or approved when required, such action is at their own risk and without liability on the part of the Government. Contractors will not be required to commence performance until:

(1) Performance and payment bonds have been furnished, when required;

(2) The award has been approved when approval is required; and

(3) Notice to proceed has been forwarded to the contractor where required.

[26 FR 11732, Dec. 7, 1961]

§ 210.4 Rules of the Corps of Engineers Board of Contract Appeals for cases not subject to the Contract Disputes Act of 1978.

(a) *Preface to rules.* (1) The Corps of Engineers Board of Contract Appeals is the authorized representative of the Chief of Engineers for the purpose of hearing, considering and determining, as fully and finally as he might, appeals by contractors from decisions of contracting officers or their authorized representative or other authorities on disputed questions, taken pursuant to the provision of contracts requiring the determination of such appeals by the Chief of Engineers or his duly authorized representative or Board.

(2) When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may in its discretion hear, consider and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(3) Emphasis is placed upon the sound administration of these rules in specific cases, because it is impractica-

ble to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(4) Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. The parties are expected to cooperate and to voluntarily comply with the intent of such procedures without resort to the Board except on controversial questions. The Board may order exchange of complicated exhibits prior to hearing in order to expedite the hearing.

(5) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(6) Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

(b) *Rule 1, Appeals, how taken.* Notice of an appeal must be in writing and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal shall be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

(c) *Rule 2, Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number) and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(d) *Rule 3, Forwarding of appeals.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal, together with a copy of the decision appealed from, to the Board. Following receipt by the Board of the papers described in the next rule (Rule 4), the contractor will be promptly advised of its receipt and that the appeal is then considered docketed, and the contractor will be furnished a copy of these rules.

(e) *Rule 4, Preparation, contents, organization, forwarding and status of appeal file*—(1) *Duties of contracting officer.* Following receipt of a notice of appeal or advice that an appeal has been filed, the contracting officer shall compile and transmit to the Board and the government trial attorney an appeal file consisting of all documents pertinent to the appeal including in particular:

(i) The decision and findings of fact from which the appeal was taken;

(ii) The contract including pertinent amendments, specifications, plans and drawings;

(iii) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which a decision was issued;

(iv) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

The contracting officer shall at the same time furnish to the appellant a copy of each document in the appeal file except those set forth in paragraph (e)(1)(ii) of this section, as to which a list furnished appellant indicating the specific contractual documents included in the file will suffice, and those set forth in paragraph (e)(4) of this section.

(2) *Supplementation of appeal file.* Within 30 days after receipt of its

copy of the appeal file the appellant may supplement the same by furnishing to the Board any document not contained therein which he considers pertinent to the appeal and furnishing two copies of each document to the government trial attorney.

(3) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies thereof and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed and indexed to identify the contents of the file.

(4) *Lengthy documents.* The Board, on motion of a party, may waive the requirement of furnishing to the other party copies of bulky, lengthy or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the office of the Board or of the party filing the same.

(5) *Status of documents in appeal file.* Documents in the appeal file are considered as evidence in the case. A party to the appeal may at any time prior to the conclusion of a hearing or in the case of an appeal submitted on the record prior to the date of the notice that the case is ready for decision object to the inclusion of any document in the appeal file. The Administrative Judge hearing the case will rule on the objection as on any other objection to the admission of evidence.

(f) *Rule 5, Dismissal for lack of jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(g) *Rule 6, Pleadings.* (1) Within 30 days after receipt of notice of docketing of the appeal, as provided in the last sentence of Rule 3, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Recorder of the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(2) Within 30 days from receipt of said complaint, or the aforesaid notice from the Recorder of the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims, as appropriate. Upon receipt thereof, the Recorder shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(h) *Rule 7, Ammendments of pleadings or record.* (1) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(2) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, are

tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the rule 4 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

(i) *Rule 8, Hearing—election.* (1) Upon receipt of respondent's answer or the notice referred to in the last sentence of Rule 6(b), appellant shall advise the Board whether he desires a hearing, as prescribed in Rules 17 through 25, or whether in the alternative he elects to submit his case on the record without a hearing, as prescribed in Rule 11.

(2) In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 12.

(j) *Rule 9, Pre-hearing briefs.* Based on an examination of the documentation described in Rule 4, the pleadings and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may in its discretion require the parties to submit pre-hearing briefs in any case in which a hearing has been elected pursuant to Rule 8. In the absence of a Board requirement therefor, either party may in its discretion, and upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board. In any case where a pre-hearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

(k) *Rule 10, Pre-hearing or pre-submission conference.* (1) When the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, upon its own initiative or upon the application of either party, call upon the parties to appear before an Administrative Judge of the Board for a conference to consider:

(i) The simplification or clarification of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record or similar agreements which will avoid unnecessary proof;

(iii) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(iv) The possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the appeal.

(2) The results of the conference shall be reduced to writing by the Administrative Judge in the presence of the parties, and this writing shall thereafter constitute part of the record.

(l) *Rule 11, Submission without a hearing.* Although both parties are entitled to a hearing under these rules, either party may elect to waive a hearing and to submit his case upon the Board record as settled pursuant to Rule 13. Such an election by one party shall not preclude the other party from requesting and obtaining a hearing. Affidavits, depositions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral arguments, transcribed if requested, and by briefs arranged in accordance with Rule 23.

(m) *Rule 12, Optional accelerated procedure.* (1) In appeals involving $25,000 or less the appellant may elect to have the appeal processed under this rule. The election may be made in the notice of appeal, the complaint or by separate correspondence. In the event of such election the case will be assigned to a single Administrative Judge who will make every effort to render his decision within 30 days of the settlement of the record and without regard to the place of the appeal on the docket. To assist in expediting

decisions the parties should consider waiving pleadings and submitting the case on the record.

(2) In cases involving $5,000 or less where there is a hearing the presiding Administrative Judge may in his discretion at the conclusion of the hearing and after such oral argument as he deems appropriate render oral summary findings of fact, conclusions and a decision on the appeal. The Board will subsequently furnish the parties a typed copy of the decision for record and payment purposes and to establish the date on which the period for filing a motion for reconsideration under Rule 29 commences.

(3) Except as herein modified, these rules otherwise apply in all respects.

(n) *Rule 13, Settling the record.* (1) The record upon which a Board decision is rendered shall consist of the pleadings, the appeal file described in Rule 4, pre-hearing orders, memoranda of pre-hearing conferences and all evidence admitted by the Board both documentary and oral as appearing in the transcript. The record shall at all reasonable times be available for inspection by the parties at the office of the Board.

(2) A case submitted on the record pursuant to Rule 11 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of the transcript or upon receipt of the briefs when briefs are to be submitted.

(3) The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal. Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or after notification by the Board that the case is ready for decision in cases submitted on the record.

(o) *Rule 14, Discovery—depositions—*(1) *General policy.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the appeal. The parties are encouraged to engage in voluntary discovery procedures.

(2) *When permitted.* The Board may, upon timely motion filed by a party after the answer has been filed, order the taking of the testimony of any person by deposition upon oral examination or by written questions for the purpose of discovery or for use as evidence or for both.

(3) *Before who taken—time and place.* Depositions shall be taken before a person authorized to administer oaths at the place of examination. The time, place and manner of taking depositions shall be as mutually agreed by the parties or as set forth in the order of the Board.

(4) *Protective orders.* The Board may in connection with the taking of any deposition make any order which justice requires to protect a party from annoyance, embarrassment, oppression or undue burden or expense.

(5) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal until it is offered and received as evidence at the hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such cases, however, the deposition may be used to contradict or impeach testimony of the witness given at the hearing. In cases submitted on the record the Board may in its discretion receive depositions as evidence.

(6) *Expenses.* Each party shall bear its own expenses associated with taking of any deposition.

(p) *Rule 15, Interrogatories; Inspection of documents; Admission of Facts.* (1) The Board may upon a timely motion filed by either party after the filing of the answer permit a party to serve written interrogatories upon the opposing party, order a party to produce and permit inspection and copying or photographing of designated documents or permit the service on a party of a request for the admission of facts. The Board in its order shall establish the date for responding to the motion.

(2) The Board may issue protective orders as in the case of depositions.

(q) *Rule 16, Service of papers.* Service of papers in all proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope, registered, or certified, postage prepaid, addressed to the

party upon whom service shall be made and the date of delivery as shown by return receipt shall be the date of service. Waiver of the service of any papers may be noted thereon or on a copy thereof or on a separate paper, signed by the parties and filed with the Board.

(r) *Rule 17, Hearings—Where and when held.* Hearings will ordinarily be held in Washington, D.C., except that, upon request reasonably made and upon good cause shown, the Board may in its discretion set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may in its discretion advance a hearing.

(s) *Rule 18, Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties, and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

(t) *Rule 19, Unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

(u) *Rule 20, Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits and other evidence not ordinarily admissible under the generally accepted rules of evidence may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

(v) *Rule 21, Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated or the presiding administrative Judge shall otherwise order. If the testimony of a witness is not given under oath the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001 and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(w) *Rule 22, Copies of papers.* When books, records, papers or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

(x) *Rule 23, Post hearing briefs*—(1) *General.* Briefs must be compact, concise, logically arranged and free from burdensome, irrelevant, immaterial and scandalous matter. Briefs not complying with this rule may be disregarded by the Board.

(2) *Time of submittal.* Briefs, including reply briefs, shall be submitted at such times and upon such terms as may be agreed to by the parties and the presiding Administrative Judge at the conclusion of the hearing.

(3) *Length of briefs.* Except by permission of the Board on motion, principal briefs shall not exceed 100 8½" by 11" pages typewritten double space exclusive of any table of contents and

table of statutes, regulations and cases cited. Reply briefs shall not exceed 20 such pages.

(y) *Rule 24, Transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Board and the reporter. If the proceedings are reported by an employee of the Government, the appellant may receive transcripts upon payment to the Government at the same rates as those set by contract between the Board and the independent reporter.

(z) *Rule 25, Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(aa) *Rule 26, Representation—The appellant.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, Commonwealth, Territory or in the District of Columbia.

(bb) *Rule 27, Representation—The respondent.* Government counsel shall be designated to represent the interests of the Government before the Board. They shall file notice of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal in order to permit reconsideration by the contracting officer: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

(cc) *Rule 28, Decisions.* Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C.

(dd) *Rule 29, Motions for reconsideration.* A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(ee) *Rule 30, Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed.

(ff) *Rule 31, Dismissal for failure to prosecute.* Whenever a record discloses the failure of the appellant to file documents required by these rules, respond to notice or correspondence from the Board, comply with orders of the Board or otherwise to indicate an intention to continue the prosecution of an appeal filed, the Board may issue an order requiring appellant to show cause within thirty days why the appeal should not be dismissed for lack of prosecution. If the appellant shall fail to show such cause, the appeal may be dismissed with prejudice.

(gg) *Rule 32, Ex Parte communications.* No Administrative Judge or member of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis or advice, whether

written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

(hh) *Rule 33, Effective date and applicability.* These revised rules shall take effect on January 14, 1975. They govern all proceedings in appeals after they take effect and also all further proceedings in appeals then pending, except to the extent that in the opinion of the Board, their application in a particular appeal pending when the Rules take effect would not be feasible or would work an injustice, in which event the former procedure applies.

[Regs., Jan. 7, 1975, DAEN]

[40 FR 2582, Jan. 14, 1975, as amended at 45 FR 19202, Mar. 24, 1980]

§ 210.5 Rules of the Corps of Engineers Board of Contract Appeals for cases subject to the Contract Disputes Act of 1978.

(a) *Preface to rules*—(1) *Jurisdiction for considering appeals.* The Corps of Engineers Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) relating to: (i) Civil Works Contracts of the Corps of Engineers, (ii) contracts made by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, or (iii) with the approval of the Chief of Engineers, contracts made by any other agency when such agency has designated the Board to decide the appeal.

(2) *Location and organization of the Board.* (i) The Board's address is Room 4108, Pulaski Building, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314, telephone (202) 272-0369.

(ii) The Board consists of a chairman, vice chairman, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members who decide the case by a majority vote. Board members are designated Administrative Judges.

(3) *Applicability of the Contract Disputes Act of 1978.* (i) If a contract with an executive agency was awarded before 1 March 1979, and if the contracting officer's final decision was issued 1 March 1979 or thereafter, the contractor may elect to proceed under the Contract Disputes Act of 1978.

(ii) If a contract with an executive agency was awarded on 1 March 1979 or thereafter, the Contract Disputes Act is automatically applicable.

(iii) All other appeals are not subject to the Contract Disputes Act of 1978 and are controlled by the Board's rules published 14 January 1975 (33 CFR 210.4).

(iv) If the Contract Disputes Act is applicable to the appeal, the contractor can elect an accelerated procedure if the disputed amount is $50,000 or less. If the disputed amount is $10,000 or less the contractor has a further right to elect a small claims (expedited) procedure. Both of these procedures are described in Rule 12. Particular note should be made of the 180 day limit on processing accelerated procedure cases and the 120 day limit on processing small claims (expedited) procedure cases.

(4) *General guidelines.* (i) Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(ii) Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. The parties are expected to cooperate and to voluntarily comply with the intent of such procedures without resort to the Board except on controversial questions. The Board expects the parties to exchange complicated exhibits prior to hearing in order to expedite the hearing.

(iii) Whenever reference is made to contractor, appellant, contracting officer, respondent, and parties, this shall include respective counsel for the parties as soon as appropriate notices of

appearance have been filed with the Board.

(b) Rule 1. *Appeals, how taken.* (1) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(2) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (b)(1) of this section, citing the failure of the contracting officer to issue a decision.

(3) Where the contractor has submitted a claim to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (b)(1) of this section, citing the failure to issue a decision.

(4) Upon docketing of appeals filed pursuant to paragraph (b)(2) or (3) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(5) In lieu of filing a notice of appeal under paragraph (b)(2) or (3) of this section, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

(c) Rule 2. *Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(d) Rules 3. *Docketing of appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

(e) Rule 4. *Preparation, content, organization, forwarding, and status of appeal file*—(1) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(i) The decision from which the appeal is taken;

(ii) The contract including specifications and pertinent amendments, plans and drawings;

(iii) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(iv) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(v) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in paragraph (e)(1)(ii) of this section. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(2) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(3) *Organization of appeal file.* Documents in the appeal file may be origi-

nals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(4) *Lengthy documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(5) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(6) Notwithstanding the foregoing, the filing of the Rule 4 (1) and (2) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

(f) Rule 5. *Motions.* (1) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(2) The Board may entertain and rule upon other appropriate motions.

(g) Rule 6. *Pleadings*—(1) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(2) *Government.* Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(h) Rule 7. *Amendments of pleadings or record.* The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be

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treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

(i) Rule 8. *Hearing election.* After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

(j) Rule 9. *Prehearing briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

(k) Rule 10. *Prehearing or presubmission conference.* (1) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(i) simplification, clarification, or severing of the issues;

(ii) the possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(iii) agreements and rulings to facilitate discovery;

(iv) limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(v) the possibility of agreement disposing of any or all of the issues in dispute; and

(vi) such other matters as may aid in the disposition of the appeal.

(2) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pre-trial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereafter constitute a part of the record.

(l) Rule 11. *Submission without a hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

(m) Rule 12. *Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures. These procedures are available solely at the election of the appellant.*

(1) Sub-Rule 12.1 *Elections to utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures.* (i) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of

this procedure appear in sub-Rule 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(ii) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in sub-Rule 12.3 of this Rule.

(iii) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(2) Sub-Rule 12.2 *The SMALL CLAIMS (EXPEDITED) procedure.* (i) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(A) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(B) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (*1*) Identify and simplify the issues; (*2*) establish a simplified procedure appropriate to the particular appeal involved; (*3*) determine whether either party wants a hearing, and if so, fix a time and place therefor; (*4*) require the Government to furnish all the additional documents relevant to the appeal; and (*5*) establish an expedited schedule for resolution of the appeal.

(ii) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(iii) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(iv) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

(3) Sub-Rule 12.3 *The ACCELERATED procedure.* (i) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods

prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(ii) Written decisions by the Board in cases processed under the Accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or the Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of desagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the Accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under Rule 29.

(4) Sub-Rule 12.4 *Motions for reconsideration in Rule 12 Cases.* Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

(n) Rule 13. *Settling the record.* (1) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(2) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(3) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(o) Rule 14. *Discovery—depositions*—(1) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(2) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(3) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(4) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(5) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(6) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

(p) Rule 15. *Interrogatories to parties, admission of facts, and production and inspection of documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (1) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (2) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (3) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after service. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(1) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

(q) Rule 16. *Service of papers other than subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

(r) Rule 17. *Hearings: Where and when held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

(s) Rule 18. *Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirements for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

(t) Rule 19. *Unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

(u) Rule 20. *Hearings: Nature, examination of witnesses*—(1) *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(2) *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative

judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(v) Rule 21. *Subpoenas*—(1) *General.* Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) *Production of books and papers.* In addition to paragraph (v)(1) (i) or (ii) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena

(2) *Voluntary cooperation.* Each party is expected: (i) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(3) *Requests for subpoenas.* (i) A request for subpoena shall normally be filed at least:

(A) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(B) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(ii) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(4) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may: (i) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where ciurcumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(5) *Form; issuance.* (i) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(ii) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(6) *Service.* (i) The party requesting issuance of a subpoena shall arrange for service.

(ii) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C 1821 or other applicable law; however, where the subpoe-

na is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(iii) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(7) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

(w) Rule 22. *Copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

(x) Rule 23. *Post-hearing briefs.* Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

(y) Rule 24. *Transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under sub-rule 12.2. Transcripts or copies of the proceedings shall be supplied to the parties at the actual cost of duplication.

(z) Rule 25. *Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its descretion as a conditon of granting permission for such withdrawal.

(aa) Rule 26. Representation: *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

(bb) Rule 27. Representation: *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time of time.

(cc) Rule 28. *Decisions.* Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to to held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(dd) Rule 29. *Motion for reconsideration.* A motion for reconsideration may be file by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(ee) Rule 30. *Suspensions; dismissal without prejudice.* The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the

Board. Where the suspension has continued, or may continue for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

(ff) Rule 31. *Dismissal or default for failure to prosecute or defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

(gg) Rule 32. *Remand from court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

(hh) Rule 33. *Time, computation and extensions.* (1) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(ii) Rule 34. *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

(jj) Rule 35. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

(kk) Rule 36. *Effective date.* These rules shall apply: (1) Mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (2) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

[45 FR 19202, Mar. 24, 1980]

PART 211—REAL ESTATE ACTIVITIES OF THE CORPS OF ENGINEERS IN CONNECTION WITH CIVIL WORKS PROJECTS

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REAL ESTATE; GENERAL

AUTHORITY: Secs. 211.1 to 211.4 issued under 5 U.S.C. 301, unless otherwise noted.

SOURCE: Secs. 211.1 to 211.4 appear at 13 FR 8747, Dec. 30, 1948, unless otherwise noted.

§ 211.1 Real estate defined.

The term "real estate" as used in this part includes land; buildings; piers and wharves; office and storage space; rights-of-way or easements, whether temporary or permanent; and any interests which may be acquired or held therein for the use or benefit of the United States by the Department of the Army or any branch thereof.

§ 211.2 Authority to acquire real estate.

(a) *Congressional authority necessary.* No land shall be acquired on account of the United States except under a law authorizing such acquisition. (See R. S. 3736; 41 U. S. C. 14.)

(b) *Authority of the Secretary.* The authority of the Secretary of the Army to acquire real estate for river and harbor improvements, flood control projects and allied purposes, is based upon enactments of the Congress authorizing the particular projects and appropriating funds therefor. These enactments are generally

termed Flood Control Acts and are passed following the submission by the Secretary of the Army of preliminary plans and surveys to the Congress for consideration and approval.

(c) *Local cooperation.* As a general rule in river and harbor and flood control projects, except channel improvements, channel rectifications, dam and reservoir, and certain other types of projects, local interests are required to provide without cost to the United States, all lands, easements and rights-of-way necessary for the construction of the projects.

§ 211.3 Function of Chief of Engineers.

(a) The Chief of Engineers, under the authority of the Secretary of the Army, is charged with the responsibility for the acquisition, management and disposal of all real estate or interests therein required for use by the Department of the Army for river and harbor, flood control and allied purposes.

§ 211.4 Acquisition of land.

(a) Real property and interests therein may be acquired by the Department of the Army by:

(1) Purchase.

(2) Condemnation.

(3) Transfer from other Government departments and agencies.

(4) Lease or similar instrument.

(5) Donation or gift.

(b) *Methods of acquisition*—(1) *Purchase.* It is the policy of the Department of the Army to secure title to lands, or the desired interest therein, by direct negotiation and purchase, where possible. Each tract of land to be acquired is approved by qualified appraisers for the purpose of determining the market value. Options for the purchase of land will not be negotiated containing reservations or exceptions by landowners or subject to outstanding rights in third parties which may interfere with the use of the land for which it is being acquired. In no case will an option be negotiated in which a vendor excepts or reserves the right to repurchase the property, or undertakes to convey subject to rights in a third party. Generally, landowners or tenants are authorized to reserve, or except from the sale, crops, timber, buildings and improvements with the right to remove same within a specified period, provided such buildings, etc., are not required for use by the Department of the Army. Land is acquired subject to public highways, roads, railroads, pipelines, and other utilities, and if it is determined that they interfere with the Government's use of the property, will be relocated or extinguished by contract between the Government and State, county or utility involved. If at any time in the course of acquisition by direct purchase, it becomes apparent that acquisition by such means will involve substantial delay or cannot be accomplished because of title defects which cannot be eliminated within a reasonable time, or because of failure to agree on the price to be paid, action is taken to acquire the land by condemnation.

(2) *Condemnation.* Condemnation of land is accomplished by the Secretary of the Army requesting the Attorney General to file a condemnation petition and procure an order from the court in the Federal Judicial District where the land is located, granting to the United States the right of immediate possession. The declaration of taking act (40 U.S.C. 258a–d) permits the Government to file a declaration of taking in conjunction with the condemnations proceedings, and provides that title to the property described therein vests immediately upon filing of the declaration in court and deposit of the Government's estimate of compensation, named in the declaration, in the registry of the court. The court may enter orders directing that all or part of the money deposited by the Government be paid to the owner of the land or other persons having an interest therein. This payment is without prejudice to the landowner's right to seek a higher value for his land in the trial of the case before the court. Pending or during the trial under condemnation proceedings, negotiations may still be conducted with the landowner for the direct purchase of his property, and in the event an agreement is reached, action is taken to dismiss the land in question from the condemnation proceedings.

(3) *Transfer of land.* Transfer of land from other Government agencies to the Department of the army is generally accomplished by obtaining a use permit, or if the land is desired permanently, then by transfer under applicable legislative authority. In the absence of such authority, a permit is obtained pending enactment of special legislation by the Congress. Public domain land under the Department of the Interior may be withdrawn and set aside for the use of the Department of the Army by Executive Order or a Public Land Order.

(4) *Lease.* The negotiation of leases for river and harbor and flood control purposes must be approved by the Chief of Engineers or his duly authorized representative.

Temporary Use by Others of Civil Works Real Estate

Authority: Secs. 211.5 to 211.9 issued under R.S. 161; 5 U.S.C. 301.

Source: §§ 211.5 to 211.9 appear at 13 FR 8748, Dec. 30, 1948, unless otherwise noted.

§ 211.5 Temporary use; how granted.

There are three methods by which the temporary use of real estate under the control of the Department of the Army may be granted: Lease, easement and licenses, or permit.

§ 211.6 Rights which may be granted by the Secretary of the Army in river and harbor and flood control property.

(a) *Leases.* (1) The Secretary of the Army is authorized, whenever he shall deem it to be advantageous to the Government, to lease such real property under the control of his Department as is not surplus to the needs of the Department within the meaning of the act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary of the Army shall determine that a longer period will promote the national defense or will be in the public interest. The Secretary of the Army may include, among other terms and conditions in the lease, a right of first refusal in the lessee to purchase the property in the event of the revocation of the lease in order to permit sale thereof by the Government, but this shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law. Each such lease shall contain a provision permitting the Secretary of the Army to revoke the lease at any time, unless he shall determine that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event each such lease shall be revocable by the Secretary of the Army during a national emergency declared by the President. Notwithstanding section 321 of the act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. In the event utilities or services shall be furnished by the Department of the Army to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the Treasury to the credit of the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise provided in this paragraph, any money rentals received by the Government directly under any such lease shall be deposited and covered into the Treasury as miscellaneous receipts. The authority granted in this section shall not apply to oil, mineral, or phosphate lands (10 U.S.C. 2667).

(2) The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities in reservoir areas under the control of the Department of the Army and to permit the construction, maintenance, and operation of such facilities. The Secretary of the Army is authorized to grant leases of lands, including structures or facilities thereon, in reservoir areas for such periods and upon such terms

as he may deem reasonable: *Provided,* That leases to non-profit organizations may be granted at reduced or nominal rentals in recognition of the public service to be rendered in utilizing the leased premises: *Provided further,* That preference shall be given to Federal, State, or local governmental agencies, and licenses may be granted without monetary considerations to such agencies for the use of all or any portion of a reservoir area, when the Secretary of the Army determines such actions to be in the public interest, and for such periods of time and upon such conditions as he may find advisable. The water areas of all such reservoirs shall be open to the public use generally, without charge, for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such water areas along the shores of such reservoirs shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts. (Sec. 4, act of December 22, 1944, 58 Stat. 887, 889, as amended by sec. 4, act of July 24, 1946, 60 Stat. 641, as amended by Sec. 209, act of Sept. 3, 1954, 68 Stat. 1266.)

(b) *Easements.* (1) The Secretary of the Army is authorized to grant easements for rights-of-way across real estate acquired for civil purposes as follows:

(i) *Poles and wires.* The Secretary of the Army may grant easements for rights-of-way, for periods not exceeding 50 years, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, over lands under his jurisdiction, upon a finding that the same is not incompatible with the public interest (see act of March 4, 1911; 36 Stat. 1253, as amended by the act of May 27, 1952, 66 Stat. 95; 43 U.S.C. 961). Form of easement is ENG Form 1360.

(ii) *Pipelines.* The Secretary of the Army may grant easements for rights-of-ways for gas, water, and sewer pipelines across lands under his control provided that such grants will be in the public interest and will not substantially injure the interest of the United States in the property affected thereby (10 U.S.C. 2669). Form of easement is ENG Form 1361.

(iii) *Other easements.* The Secretary of the Army is authorized and empowered, under such terms and conditions as are deemed advisable by him, to grant easements for rights-of-way over, across, in and upon acquired lands under his jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Department of the Army, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for:

(*a*) Railroad tracks;

(*b*) Oil pipelines;

(*c*) Substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipelines;

(*d*) Canals;

(*e*) Ditches;

(*f*) Flumes;

(*g*) Tunnels;

(*h*) Dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements;

(*i*) Roads and streets;

(2) *Provided,* That:

(i) Such rights-of-way shall be granted only upon a finding by the Secretary of the Army that the same will not be incompatible with the public interest.

(ii) Such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted.

(iii) All or any part of such rights-of-way may be annulled and forfeited by the Secretary of the Army for failure to comply with the terms and conditions of the grant or for the nonuse

for a period of two consecutive years or abandonment of rights granted (10 U.S.C. 2668).

§ 211.7 Rights which may be granted by Division and District Engineers.

(a) *Authority of Division and District Engineers.* Division Engineers, the President of the Mississippi River Commission, and District Engineers of districts to which real estate functions have been or may be assigned are authorized to lease, in the name of and by authority of the Secretary of the Army, lands of the United States and improvements thereon, acquired for reservoirs for navigation and flood control, subject to the prior approval of the Chief of Engineers. Recommendations of District Engineers will be considered by Division Engineers and the President of the Mississippi River Commission in granting leases and District Engineers will administer the provisions of the leases, including the collection and deposit of payments.

§ 211.8 Limitations on rights which may be granted.

(a) *Advertising.* It is the policy to grant leases to the highest responsible bidders after advertising, where competition is practicable. Advertising consists of the circularization of notices among former owners of the land, owners of adjacent lands, and others known to be interested and by the posting of notices in public places, and publication of notices in newspapers where such publication is deemed advisable. Exceptions have been made to this policy in favor of former owners in granting leases for agricultural and grazing purposes in reservoir areas.

(b) *Consideration.* Title 10 U.S.C. 2667 provides that notwithstanding section 321 of the act of June 30, 1932 (47 Stat 412; 40 U.S.C. 303b) or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. The consideration will be adequate but may consist of money and/or maintenance, protection, repair, or restoration by the lessee, of the property leased.

(c) *Consideration in easements and licenses.* In order to fully protect the interests of the United States, the Secretary of the Army will not, without substantial compensation grant to non-government agencies, for the purpose of private profit, valuable rights in Government property. A fair charge will be made for such privileges, the amount to be determined by all the circumstances surrounding the case, including an estimate as to what private interest in the vicinity would charge for a similar privilege.

§ 211.9 Applications for leases, easements, licenses, and permits.

Applications for use of Civil Works property should be made to the District Engineer of the district within the boundaries of which the real estate is located. The District Engineer will determine whether the property will be required for public use during the period of the contemplated grant and whether the requested grant will interfere with any operations of the United States.

Disposal of Real Estate Acquired for Civil Works Purposes

Authority: Secs. 211.10 to 211.13 issued under R.S. 161; 5 U.S.C. 301.

Source: Secs. 211.10 to 211.13 appear at 13 FR 8749, Dec. 30, 1948, unless otherwise noted.

§ 211.10 Disposition of lands.

(a) Acts authorizing the Secretary of the Army to dispose of land acquired for the improvements of canals, rivers and harbors, or for flood control purposes are as follows:

(1) Section 7 of the act of Congress approved August 30, 1935 (49 Stat. 1048; 33 U.S.C. 558a) as extended by section 6 of the act approved August 18, 1941 (55 Stat. 650; 33 U.S.C. 701c-2, 77th Congress) authorizing sale of lands no longer needed for the purpose for which acquired.

§ 211.11 Sale or salvage of buildings, improvements, or crops.

(a) *Authority of law.* When any property (except land) which has been

heretofore or may be hereafter purchased or acquired for the improvement of rivers and harbors or for flood control work is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of the Army may direct and the proceeds credited to the appropriation for the work for which it was purchased or acquired. (Section 5, act of June 13, 1902 (32 Stat. 373; 33 U.S.C. 558), as extended by section 3, act of March 1, 1917 (39 Stat. 450; 33 U.S.C. 701).)

(b) *Division Engineers.* Sales are conducted by the Division Engineers, Corps of Engineers.

(c) *Removal of buildings, improvements, or crops other than by sale.* If the buildings, improvements, or crops cannot be sold, they may be salvaged or razed as a part of the work under the project if they are in the way of new construction or interfere with the efficient operation of the project.

§ 211.12 Exchange of lands.

The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately owned lands required for such purposes. (Sec. 2 of the act of June 20, 1938 (52 Stat. 804; 33 U.S.C. 558b) as extended by sec. 3 of the act of August 11, 1939 (53 Stat. 1414, 33 U.S.C. 558b-1).)

§ 211.13 Approval of the Office of the Chief of Engineers.

In any case in which it may be necessary or advisable in the execution of an authorized project to exchange real property of the Government for real property required for such project, the Chief of Engineers receives a directive from the Secretary of the Army, and effects the exchange through the Division Engineers, Corps of Engineers.

Real Estate Claims

AUTHORITY: Secs. 211.14 to 211.24 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: Secs. 211.14 to 211.24 appear at 13 FR 8749, Dec. 30, 1948, unless otherwise noted.

§ 211.14 Definition.

The term "real estate claims" refers to those demands for payment submitted by individuals, partnerships, associations or corporations, including States, territories, and political subdivisions thereof, for rent, damages, utilities, out-of-pocket expenses and other payments, arising under the terms and conditions, whether express or implied, of leases or other contracts for the use and occupancy of real estate by the Department of the Army or the Army, including right of entry permits, options to purchase, and other instruments sufficient to support a contractual relationship between the United States and property owner, or arising from the use and occupancy of real estate by the Department of the Army or the Army with the express or implied consent of the owner thereof in the absence of any formal lease or other contract therefor.

§ 211.15 Statutory provisions.

(a) All claims and demands whatever against the Government, unless there is some special authority for the settlement thereof by the department concerned, shall be settled and adjusted in the General Accounting Office (see R.S., sec. 236, as amended by act of June 10, 1921, 42 Stat. 24; 31 U.S.C. 71).

(b) *Meritorious Claims Act.* When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress, by a special report containing the material facts and his recommendations thereon (act of April 10, 1928; c. 334, 45 Stat. 413; 31 U.S.C. 236).

(c) *Limitations of time on claims and demands under (a) and (b) of this section.* The act of October 9, 1940 (54 Stat. 1061; 31 U.S.C. 71a) provides that every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under the act of June 10, 1921, and the

act of April 10, 1928, will be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, will be received in said office within ten full years after the date such claim first accrued: *Provided, however,* That when such a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established. The act further provides that whenever any claim barred by the preceding provision will be received in the General Accounting Office, it will be returned to the claimant, with a copy of this act (act of October 9, 1940) and such action will be a complete response without further communication.

(d) *Domestic Claims Act.* The act of July 3, 1943 (57 Stat. 372; 31 U.S.C. 223b, 223c) as amended by the act of May 29, 1945 (Pub. L. 67, 79th Congress) and as further amended by the act of June 28, 1946 (Pub. L. 466, 79th Congress), provides for the payment of claims arising on or after May 27, 1941, for damage to or loss or destruction of property, real or personal, caused by military personnel or civilian employees of the Department of the Army or of the Army while acting within the scope of their employment or otherwise incident to noncombat activities of the Department of the Army or of the Army, including claims for damages to real property incident to the use and occupation thereof, whether under a lease, express or implied, or otherwise, and including claims of the foregoing categories arising out of civil works, provided they do not exceed $1,000. The act further provides that the damage to or loss or destruction of property shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agent or employee; that no claim shall be settled under the act unless presented in writing within one year after the incident out of which such claim arises shall have occurred except that if the incident occurs in time of war, or if war intervenes within one year after its occurrence, any claim may, on good cause shown, be presented within one year after peace is established. The Secretary of the Army is authorized to report such claims as exceed $1,000 to Congress for its consideration.

§ 211.16 Scope and application of Army Regulations.

(a) AR (Army Regulations) 25-25 has been issued in furtherance of the act of July 3, 1943. The regulations in this part, in keeping with the terms of the act, apply to claims for damages only. Paragraph 7 of AR 25-25 provides that claims for damages to real property incident to the use and occupancy thereof by the government under a lease express or implied, or otherwise, are payable under this section even though legally enforceable against the Government as contract claims. However, if deemed preferable in the best interest of the Government claims payable under paragraph 7 may be processed to the General Accounting Office for direct settlement under sec. 236, Revised Statutes. Claims for rent of real property are not payable under AR 25-25.

(b) AR 100-64 has been issued in furtherance of Section 236, Revised Statutes, as amended by the act of June 10, 1921; 42 Stat. 24, 31 U.S.C. 71. These regulations provide exclusive authority for the consideration and settlement of claims for rent and other payments of an express or implied contractual nature, and optional authority with AR 25-25 for settlement of damages, in excess of $1,000 arising out of the use and occupancy of real estate by the Department of the Army or the Army under an agreement expressed or implied. AR 100-64 applies to all claims for rent regardless of amount and for other payments of a contractual nature, for example, claims for electricity, heat, light, water, and other out-of-pocket expenses, repairs, etc., where such expenses are not included in the lease as a part of the rental consideration.

§ 211.17 Authority of Division Engineers, Corps of Engineers to settle claims.

(a) Authority has been delegated to Division Engineers, within the geographical limits of their respective ju-

risdictions, to approve or disapprove, in amounts not exceeding $1,000, any claim within the purview of the act of July 3, 1943, as amended. Insofar as real estate claims are concerned this delegation of authority applies only to claims for damages incident to the use and occupancy of real property by the Department of the Army or the Army.

(b) Division Engineers have no authority to settle and make payment of claims for damages in excess of $1,000 or for rents or other payments of a contractual nature regardless of amount arising out of the use and occupation of real estate under an agreement, express or implied, or otherwise.

§ 211.18 Action by claimant.

Real estate claims may be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner", as so used, includes lessees, mortgagors, and conditional vendees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. The claim, if filed by an agent or legal representative, should show the title of the person signing and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary.

§ 211.19 Place of filing claims.

All real estate claims should be submitted to the United States Division Engineer in whose jurisdiction the claim arises.

§ 211.20 Form of claim.

Claims should be submitted by presenting in triplicate a signed statement, giving the claimant's address, setting forth the amount of the claim, and, so far as possible, the detailed facts and circumstances giving rise to the claim, indicating and describing the property involved, the date or dates, and the nature and extent of the damage, loss or destruction claimed, and the agency or branch of the Department of the Army or Army using the property. Upon receipt of such a claim the Division Engineer will, where practicable or necessary, furnish the claimant with Department of the Army forms for a more formal presentation of his claim including instructions as to their use.

§ 211.21 Evidence to be submitted by claimant.

(a) All claims must be substantiated by competent evidence. If the claim is for rent or other payment the claimant should furnish evidence as to the value of the property, income from the property if previously rented, or rental value of similar property in the vicinity. If the property is under a formal lease to the Government, the claimant should identify the lease and state the covenants of the lease upon which he predicates his claim. Where the claim is for damage to the property which has been or can be economically repaired the claimant should submit in triplicate an itemized signed statement or estimate of the cost of repairs and copies of itemized receipts, evidencing payment for any expenditures made in relation to the property for which reimbursement is claimed.

(b) In support of claims for damage to crops the claimant should submit a statement showing the number of acres, or other unit measure of crops damaged, the normal yield per unit, the gross amount which would have been realized from normal yield, and an estimate of the further cost of cultivation, harvesting and marketing; if the crops are one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop should also be stated. All such statements or estimates should, if possible, be by disinterested competent witnesses, preferably responsible dealers of the type of property damaged.

§ 211.22 Real estate Claims Officers.

In each Division Office the Division Engineer has appointed a Claims Officer or Assistant Claims Officers who have the duty and responsibility under the direction of the Division Real Estate Officer, to investigate all real estate claims. The activities and responsibilities of these Claims Officers are described more fully under § 211.23.

§ 211.23 Procedure.

Upon the receipt of any real estate claim it is submitted to a Claims Officer who investigates the matter and secures all evidence necessary for a full consideration of the claim and upon which a determination can be made as to the liability of the Government. For this purpose the Claims Officer is authorized and charged with the duty of securing sufficient evidence to establish with certainty the following general points:

(a) The nature of the claim.

(b) The interest of the claimant in the property and the interest that others may have in the property.

(c) Date and circumstances under which occupation of premises occurred and date of vacation. If under a lease, the lease number and date of lease.

(d) Inspection of the premises and determination of the amount of damages.

(e) If claim is for rental without formal lease or agreement, data as to the market and rental value of the property.

(f) Any other pertinent evidence the particular facts of the case require.

The above obligations of the Claims Officer does not relieve the claimant from the burden of proving his claim and it is the duty and obligation of the claimant to furnish such evidence within his particular knowledge as the Claims Officer may require.

Upon completion of his investigation the Claims Officer prepares a report setting forth completely but briefly the nature and amount of the claim, all pertinent facts necessary to determine the rights and liabilities of the claimant and the Government, and the Claims Officer's conclusions and recommendations as to allowance or disallowance of the claim in whole or in part and reasons therefor, including citations to any laws, statutes, or other decisions which it is believed will substantiate his recommendation.

§ 211.24 Disposition of claims.

(a) *Real estate claims for damages.* Real estate claims for damages not exceeding $1,000 may be settled by the Division Engineer. If the Division Engineer allows the claim in toto it is transmitted to the local Disbursing Officer who transmits a check to claimant in payment of the claim. Where the claim is disallowed by the Division Engineer, in whole or in part, the claimant is so advised and in the event that he is unwilling to accept the decision of the Division Engineer, he may appeal within 30 days after receipt of such notice, through the Division Engineer's Office, to the Secretary of the Army. This appeal should state in full reasons for not accepting the Division Engineer's award.

(b) *Claims for damages in excess of $1,000.* Claims for damages in excess of $1,000 arising out of the use and occupancy of real estate under an agreement, express or implied, or otherwise, are forwarded to the General Accounting Office for settlement.

(c) *Claims for rent or other payments.* Claims for rent or other payments of a contractual nature regardless of amount arising out of the use and occupancy of real estate under an agreement, express or implied, or otherwise, are forwarded to the General Accounting Office.

(d) *Mixed claims for rental and damages.* When a claim arising from the use and occupancy of real estate has been received, the elements of the claim are first determined. If the claim is for damages not in excess of $1,000 and rental, these elements are if practicable, separated and the damages settled under AR 25-25, otherwise the claims are forwarded to the General Accounting Office for direct settlement.

Federal Jurisdiction Over Real Estate

Authority: Secs. 211.25 to 211.28 issued under R.S. 161; 5 U.S.C. 301.

Source: Secs. 211.25 to 211.28 appear at 13 FR 8751, Dec. 30, 1948, unless otherwise noted.

§ 211.25 General considerations in the acquiring of Federal jurisdiction.

(a) *Laws governing the acquisition of Federal jurisdiction—(1) Constitution of the United States.* By Article 1, Section 8, Clause 17, of the Constitution, Congress has the power to exercise exclusive legislation in all cases in

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the District of Columbia and to exercise like authority over all land acquired by the United States with the consent of the legislature of the State in which the land is located for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

(2) *Section 355, Revised Statutes of the United States.* Under this section as amended by the acts of Congress approved February 1, 1940 (54 Stat. 19) and October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), jurisdiction over lands acquired by the Department of the Army does not vest until the Secretary of the Army has indicated acceptance of such jurisdiction by filing a notice of acceptance with the Governor of the State or in such manner as may be prescribed by the laws of the State where the land is situated.

(3) *State laws.* The laws of the various States indicate the type of jurisdiction ceded or to be ceded, and prescribe the requirements, if any, to be complied with prior to the vesting of jurisdiction in the United States.

§ 211.26 Functions in acquiring Federal jurisdiction.

(a) *The Division Engineer.* Upon determination that Federal jurisdiction is desired over a Civil Works Project, the Office of the Division Engineer concerned prepares such maps and descriptions of the lands involved as may be required and forwards them to the Office of the Chief of Engineers with any further information called for by the laws of the State where the lands are located.

(b) *Chief of Engineers.* All letters and other papers required to procure cessions of jurisdiction and all notices of acceptance are prepared in the Office of the Chief of Engineers.

§ 211.27 Method of acquiring Federal jurisdiction.

Jurisdiction is acquired in accordance with the laws of the various States.

§ 211.28 Acceptance of jurisdiction.

The jurisdiction ceded by the State laws, by deeds of cession and by the enactment of special legislation shall be accepted in accordance with section 355, Revised Statutes, as amended, in order to establish Federal jurisdiction. This is accomplished by a letter from the Secretary of the Army addressed to the Governor of the State concerned or by an indorsement on the deed of cession giving notice of such acceptance.

Sale of Lands in Reservoir Areas Under Jurisdiction of Department of the Army for Cottage Site Development and Use

Authority: Secs. 211.71 to 211.81 issued under sec. 2, 70 Stat. 1065; 16 U.S.C. 460f.

Source: Secs. 211.71 to 211.81 appear at 28 FR 3450, Apr. 9, 1963, unless otherwise noted.

§ 211.71 Statutory provisions.

The Act of Congress approved August 6, 1956 (70 Stat. 1065).

§ 211.72 Definitions.

(a) *The Act.* The Act of Congress approved 6 August 1956 (70 Stat. 1065; Pub. L. 999, 84th Congress).

(b) *Cottage site.* Cottage site as used in §§ 211.71–211.80, includes:

(1) *Individual cottage site.* A parcel of land developed or to be developed by the construction of a private cottage thereon and used, or to be used, for private recreational purposes.

(2) *Group cottage site.* A parcel of land containing multiple cottage sites developed or to be developed individually by members of an organization to which the land is currently leased by the construction on each site of a private cottage owned individually and used, or to be used, for private recreational purposes.

(3) *Colony cottage site.* A parcel of land containing (i) multiple cottage sites developed or to be developed individually by members of an organization to which the land is currently leased by the construction on each site of a private cottage owned individually and used or to be used for private recreational purposes, and (ii) a site or sites developed or to be developed by the lessee by construction of community recreational facilities for joint use by all members of the lessee organization incident to occupancy of their privately owned cottages on the leased

premises and/or an area of land to be preserved in an undeveloped state for such joint use by all members of the lessee organization.

§ 211.73 Determination of land available for sale.

The Chief of Engineers or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) is hereby delegated authority to determine that lands in reservoir areas under the jurisdiction of the Department of the Army, other than lands withdrawn or reserved from the public domain, (a) are not required for project purposes or for public recreational use, and (b) are being used for or are available for cottage site development and use, and to determine that such lands are available for sale for cottage site development and use. The Chief of Engineers or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) is authorized to withdraw any lands determined available for sale for cottage site development and use at any time prior to the execution of a contract of sale for such lands, provided, he determines that such withdrawal will facilitate the administration of the reservoir area or will otherwise be in the public interest.

§ 211.74 Public notice of the availability of land for sale.

Upon determination in accordance with §§ 211.71 through 211.80 that land is available for sale for cottage site development and use, the appropriate District Engineer, U.S. Army Engineer District (hereinafter referred to as the District Engineer) will give public notice of the availability of such land for sale, subject to such conditions, reservations and restrictions as are required by the Act and such other conditions, reservations and restrictions as the Chief of Engineers or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) may determine to be necessary for the management and operation of the project, or for the protection of lessees or owners of cottage sites within the area. Public notice of the availability of such land for sale will be by: (a) Publication at least twice, at no less than 15 day intervals, in two newspapers having general circulation in the vicinity in which the land is located; (b) written notification to any persons or organizations known to be interested in acquiring a cottage site in the area; (c) posting of notices in public places; and (d) in addition, where any site on which a lease for cottage site purposes existed on August 6, 1956, is available, notice will be given by registered letter to the lessee at his last known address.

§ 211.75 Price.

The Chief of Engineers, or his designee, is authorized to determine the fair market value of any site determined available for sale for cottage site development and use based on an appraisal thereof by a qualified appraiser. Sale of a cottage site to a lessee holding a lease on the date of the Act will be made for a price equal to the fair market value of the site at the time of the sale.

§ 211.76 Costs of surveys.

The costs of any surveys or the relocation of boundary markers deemed necessary by the District Engineer as an incident of the conveyance of lands under §§ 211.71 through 211.80 shall be borne by the grantee.

§ 211.77 Sale procedure.

Any individual cottage site offered for sale generally will not contain more than approximately one acre. Such sites shall not be subdivided but shall remain intact as single units, and no more than one cottage may be constructed on each site. Not more than one site at any one reservoir will be sold to any person or organization. Sales to lessees of lands determined available for sale for cottage site development and use, who have a priority to purchase under the provisions of the Act, will be accomplished by negotiation. Sales to lessees who do not have a priority to purchase under the provisions of the Act may be accomplished by negotiation in the discretion of the Chief of Engineers or the Director of Real Estate (Assistant to the Chief of Engineers for Real Estate). Sales to persons other than

lessees will be accomplished by public auction, or sealed bids, in accordance with procedure prescribed by the Chief of Engineers. If no acceptable bid or offer is received as a result of a public auction or solicitation for sealed bids, sale may be accomplished by negotiation in accordance with procedure prescribed by the Chief of Engineers.

§ 211.78 Maintenance and conveyance of access roads.

The Government will not construct any roads for the sole purpose of providing access to lands sold or to be sold for cottage site development and use. The Government shall be under no obligation to service or maintain existing roads used primarily for access to lands sold for cottage site development and use. Any lands determined by the Chief of Engineers or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) as being used or to be used for roads primarily to serve any cottage site area sold under the authority of the Act may be offered by the District Engineer for transfer to the State, any political subdivision thereof, or organization in accordance with the provisions of the Act.

§ 211.79 Contract of sale.

The agreement between the purchaser and the Government will be evidenced by a contract of sale. Authority is hereby delegated to the Chief of Engineers or the District Engineer to accept any offer which meets the requirements of the Act and §§ 211.71 through 211.80 and to execute the contract of sale on behalf of the United States of America.

§ 211.80 Conveyance.

(a) Authority to execute quitclaim deeds conveying land for cottage site development and use or for access roads is delegated to the Chief of Engineers, with authority to redelegate to Division and/or District Engineers.

(b) The authority delegated to the Chief of Engineers in paragraph (a) of this section to execute quitclaim deeds conveying land for cottage site development and use or for access roads has been redelegated by the Chief of Engineers to the Division Engineer, U.S. Army Engineer Division, New England, and to District Engineers having responsibility for real estate activities.

§ 211.81 Reservoir areas.

Delegations, rules and regulations in §§ 211.71 to 211.80 are applicable to:

(a) Fort Gibson Reservoir Area, Oklahoma.

(b) Lake Texoma and the Denison Reservoir Area, Oklahoma and Texas.

(c) Tenkiller Ferry Reservoir Area, Oklahoma.

(d) Harlan County Reservoir Area, Nebraska.

(e) Fort Randall Reservoir Area, South Dakota.

(f) Garrison Reservoir Area, North Dakota.

(g) Kanopolis Reservoir Area, Kansas.

(h) Arkabutla Reservoir Area, Mississippi.

(i) Enid Reservoir Area, Mississippi.

(j) Sardis Reservoir Area, Mississippi.

(k) Narrows Reservoir Area, Arkansas.

(l) Wappapello Reservoir Area, Missouri.

(m) Norfork Reservoir Area, Arkansas and Missouri.

(n) Clark Hill Reservoir Area, Georgia and South Carolina.

(o) Alatoona Reservoir Area, Georgia.

(p) Center Hill Reservoir Area, Tennessee.

(q) Dale Hollow Reservoir Area, Tennessee.

(r) Lake Cumberland, Kentucky.

(s) Fort Supply Reservoir, Oklahoma.

[28 FR 4357, May 2, 1963, as amended at 30 FR 4475, Apr. 7, 1965]

Reconveyance of Land or Interests Therein Acquired for Grapevine, Garza-Little Elm, Benbrook, Belton, and Whitney Reservoir Projects in Texas and also for the Verdigris River Portion of the McClellan-Kerr Navigation Project in Oklahoma, to Former Owners

Authority: Secs. 211.101 to 211.111 issued under sec. 205, 72 Stat. 316.

§ 211.101 Statutory provisions.

Section 205 of the Act of Congress approved July 3, 1958 (72 Stat. 316) and section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800).

[23 FR 7348, Sept. 28, 1958, as amended at 37 FR 15371, Aug. 1, 1972]

§ 211.102 Definitions.

(a) *General.* Any term used in §§ 211.101 to 211.111 which is defined in section 205 of the Act of Congress approved July 3, 1958 (72 Stat. 316) or in section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800), shall have the meaning given to it in said act.

(b) *Land.* Any land or interest in land acquired by the United States for the Grapevine, Garza-Little Elm, Benbrook, Belton, and Whitney Reservoir projects, Texas, or for the Verdigris River portion of the McClellan-Kerr Navigation Project Oklahoma.

(c) *The Act.* The term "the act" when used in §§ 211.101 to 211.111 shall mean either section 205 of the Act of Congress approved July 3, 1958 (72 Stat. 316), or section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800).

(d) *District Engineer.* The term "District Engineer" when used in §§ 211.101 to 211.111 shall mean the District Engineer, U.S. Army Engineer District, Fort Worth, at Fort Worth, Tex., or the District Engineer, U.S. Army Engineer District, Tulsa, at Tulsa, Okla.

(e) *Director of Civil Works.* The term "Director of Civil Works" when used herein shall mean the Director of Civil Works, Office, Chief of Engineers or the Assistant Chief of Engineers for Civil Works.

[23 FR 7348, Sept. 28, 1958, as amended at 37 FR 15371, Aug. 1, 1972]

§ 211.103 Determination of whether land is required for public purposes, including public recreational use.

The Chief of Engineers and the Director of Public Works are hereby delegated authority to determine which lands are not required for public purposes, including public recreational use, and to determine the exceptions, restrictions and reservations, as are in the public interest, to be included in any reconveyance, including the reservation of such mineral rights as are determined necessary for the efficient operation of the project. This delegation of authority shall not apply to lands below the level of 529 feet in the Garza-Little Elm Reservoir project and below 560 feet in the Grapevine Reservoir project as the lands below these levels will not be available for reconveyance pursuant to the act.

[23 FR 7348, Sept. 28, 1958, as amended at 37 FR 15371, Aug. 1, 1972]

§ 211.104 Notice to former owners of availability of land for reconveyance.

Upon determination in accordance with §§ 211.101 to 211.111 that land is not required for public purposes, including public recreational use, the appropriate District Engineer shall give notice to the former owners thereof (a) by registered letter, addressed to the last known address of the former owner; and (b) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation in the vicinity in which the land is located.

[37 FR 15371, Aug. 1, 1972]

§ 211.105 Filing of application.

Application for reconveyance of land shall be filed with the appropriate District Engineer. Said application shall be in writing, dated and signed by the former owner, or by his attorney in fact, and shall identify the land for which he is making application for reconveyance. Any such application will be considered as filed timely when mailed to or delivered to the appropriate District Engineer within ninety (90) days from the date of the last publication of availability of the land for reconveyance to said former owners. The appropriate District Engineer may extend said ninety (90) day period for a good cause. Any application may be withdrawn by written notice, executed by the former owner, or by his attorney in fact, to the appropriate District Engineer at any time prior to the execution of the contract of sale.

[37 FR 15371, Aug. 1, 1972]

§ 211.106 Filing of objection by abutting owner.

An objection by an abutting owner to reconveyance of land to a former owner shall be filed with the appropriate District Engineer. Such objection shall be in writing, dated and signed by the abutting owner, or his attorney in fact, and shall include identification of the land to which the objection pertains, the name of the former owner, the reasons for the objection, and a reference to the land records where the ownership of the abutting owner is recorded. A copy of the letter addressed to the former owner objecting to the reconveyance shall be attached to the letter addressed to the appropriate District Engineer, or other evidence of such notice of objection shall be furnished to the appropriate District Engineer. No objection will be considered valid unless the party or individual making the objection is the record owner of land abutting or adjoining the land to which the objection pertains.

[37 FR 15371, Aug. 1, 1972]

§ 211.107 Notice of agreement between former owner and abutting owner.

After an objection has been made by an abutting owner to a reconveyance, and agreement reached concerning the reconveyance shall be furnished in writing, signed by both the abutting owner and the former owner, or their attorneys in fact, to the appropriate District Engineer. Such agreement must be mailed or delivered to the appropriate District Engineer within ninety (90) days after the date of receipt of the notice of objection by the appropriate District Engineer and the former owner. In the event an agreement in writing as prescribed herein is not mailed or delivered to the appropriate District Engineer, the appropriate District Engineer is hereby authorized to report the land involved to the General Services Administration for disposal as prescribed by the Act.

[37 FR 15371, Aug. 1, 1972]

§ 211.108 Determination of price.

Upon receipt of an application from a former owner, the Chief of Engineers and/or the appropriate District Engineer is hereby delegated authority to determine the price at which the land will be sold pursuant to the provisions of section 205(d) of the Act of Congress approved July 3, 1958 (72 Stat. 316) or pursuant to the provisions of section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800) and the cost of any surveys or boundary markings necessary as an incident to the conveyance.

[37 FR 15371, Aug. 1, 1972]

§ 211.109 Contract of sale.

Upon determination of the price at which the land will be reconveyed, and after the reaching of an agreement by the former owner and the abutting owner if an objection to the reconveyance was made by the abutting owner, the appropriate District Engineer will prepare a contract of sale containing the terms and conditions of the reconveyance and deliver it to the applicant for acceptance. The contract of sale shall provide for the deposit of earnest money equal to twenty (20) percent of the price at which the land will be sold or the estimated cost of any surveys or boundary markings necessary as an incident to the reconveyance, whichever is greater. The deposit will be applied to the price at the time of settlement. In the event of default, the deposit will be retained by the Government as liquidated damages. Failure of the applicant to execute the contract of sale or to deposit the earnest money with the appropriate District Engineer within thirty (30) days after receipt of the contract, unless a written extension of said thirty (30) days is granted by the appropriate District Engineer, in accordance with section 205(e) of the Act of Congress approved July 3, 1958 (72 Stat. 316) or in accordance with section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800) and the delegation contained in § 211.111, that within a reasonable time after receipt of a proper application for any reconveyance of such land, the parties have been unable to

reach a satisfactory agreement with respect to the reconveyance of such land. Authority is hereby delegated to the Chief of Engineers and/or the appropriate District Engineer to execute the contract of sale for and on behalf of the United States of America.

[37 FR 15371, Aug. 1, 1972]

§ 211.110 Conveyance.

Reconveyance of the land will be by quitclaim deed executed by the Secretary of the Army.

[23 FR 7348, Sept. 28, 1958]

§ 211.111 Certification terminating rights of former owners.

If no application for reconveyance is made by a former owner within ninety (90) days, or authorized extension thereof, from the date of the last publication of the notice in a newspaper or, if within a reasonable time after receipt of a proper application for any reconveyances, the appropriate District Engineer and the former owner are unable to reach a satisfactory agreement with respect to the reconveyance, the Chief of Engineers and/or the appropriate District Engineer is hereby delegated authority to certify (a) that notice has been given to the former owner of such land pursuant to the Act and §§ 211.101 to 211.111, and that no qualified applicant has made timely application for reconveyance of such land; or (b) that within a reasonable time after receipt of a proper application for reconveyance the parties have been unable to reach a satisfactory agreement with respect to the reconveyance of such land. After such certification has been executed, disposition of the land shall be made pursuant to the Federal Property Administrative Services Act of 1949, as amended, subject to such reservations, restrictions, exceptions, and conditions, as the Chief of Engineers or the Director of Civil Works consider necessary for the operation of the project or in the public interest.

[37 FR 15372, Aug. 1, 1972]

Conveyances for Public Port or Industrial Facilities

Authority: Secs. 211.141 to 211.147 issued under sec. 108(d), 74 Stat. 487; 33 U.S.C. 578.

Source: Secs. 211.141 to 211.147 appear at 26 FR 2117, Mar. 11, 1961, unless otherwise noted.

§ 211.141 Statutory provisions.

Section 108 of the Act of Congress approved 14 July 1960 (74 Stat. 486).

§ 211.142 Definitions.

(a) *This Act.* The term "this Act" shall mean Section 108 of the Act of Congress approved 14 July 1960 (74 Stat. 486).

(b) *Land.* Any land under the jurisdiction of the Department of the Army acquired for a project which was authorized for water resource development purposes.

(c) *Project.* Any project under the jurisdiction of the Department of the Army which was authorized for water resource development purposes.

(d) *Agency.* The term "agency" shall mean any state, political subdivision thereof, port district, port authority, or other body created by a state or through a compact between two or more states for the purpose of developing or encouraging the development of public port or industrial facilities.

(e) *District Engineer.* The term "District Engineer" shall mean the District Engineer of the United States Army Engineer District having immediate jurisdiction over the land available for conveyance.

§ 211.143 Delegations.

(a) The Chief of Engineers and/or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) is hereby delegated authority to determine:

(1) That the development of public port or industrial facilities on land within a project will be in the public interest;

(2) That such development will not interfere with the operation and maintenance of the project;

(3) That disposition of the land for these purposes under this Act will serve the objectives of the project;

(4) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purposes for which the project was authorized; and

(5) The conditions, reservations and restrictions to be included in a conveyance under this Act.

(b) The District Engineer is hereby delegated authority to:

(1) Give notice of any proposed conveyance under this Act and to afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase as hereinafter provided; and

(2) Determine the period of time in which applications for conveyances may be filed.

§ 211.144 Notice.

The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (a) by publication at least twice at not less than 15 day intervals in two newspapers having general circulation within the State in which the available land is located and, if any agency of an adjoining State or States may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15 day intervals in two newspapers having general circulation within such State or States, and (b) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

§ 211.145 Filing of application.

Any agency interested in the development of public port or industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully the purposes for which the land is desired and the scope of the proposed development.

§ 211.146 Price.

No conveyance shall be made for a price less than the fair market value of the land.

§ 211.147 Conveyance.

Any conveyance of land under this Act will be subject to the final approval of the Secretary of the Army and will be by quitclaim deed executed by the Secretary of the Army.

PART 214—EMERGENCY SUPPLIES OF DRINKING WATER

Sec.

214.1 Purpose.
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AUTHORITY: Pub. L. 84-99, as amended, Emergency Flood Control Work 33 U.S.C. 701n; (69 Statute 186), dated June 28, 1955.

SOURCE: 41 FR 7506, Feb. 19, 1976, unless otherwise noted.

§ 214.1 Purpose.

This provides information, guidance, and policy for execution of the Chief of Engineers' authority to furnish supplies of clean drinking water pursuant to Pub. L. 84-99, as amended by section 82(2), Pub. L. 93-251 (88 Stat. 34).

§ 214.2 Applicability.

This regulation is applicable to Corps of Engineers field operating agencies assigned Civil Works activities, including the USAED Alaska, and the Pacific Ocean Division. Its provisions are applicable within the 50 states, and the District of Columbia, Puerto Rico, Virgin Islands, American Samoa, and Guam.

§ 214.3 Reference.

(a) Pub. L. 84-99, as amended (33 U.S.C. 701n).

(b) Pub. L. 93-251, Section 82(2).

(c) Pub. L. 93-523.

(d) ER 500-1-1.

§ 214.4 Additional authority.

Section 82(2), Pub. L. 93-251, dated 7 March 1974, revised Pub. L. 84-99, as amended, by adding the following new

sentence. "The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean drinking water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality." This authority expands the measures the Chief of Engineers may employ in providing emergency relief pursuant to Pub. L. 84-99.

§ 214.5 Policy.

Emergency work under this authority will be applied to situations in which the source of water has become contaminated. The contamination may be accidental, deliberate, or caused by natural events. The maximum contaminent levels in drinking water are set forth by the Environmental Protection Agency pursuant to Pub. L. 93-523. However, loss of the water source or supply due to any cause is not included in the language of Section 82(2), Pub. L. 93-251, and furnishing emergency supplies by the Corps of Engineers under those situations was not intended by this legislation. Approval of measures to furnish clean drinking water will be pursuant to this regulation, and in accordance with procedures outlined in ER 500-1-1 by HQDA (DAEN-CWO-E) WASH DC 20314. DAEN-CWO-E will be notified by telephone when the emergency water situation becomes known.

§ 214.6 Discussion.

(a) The amendment provides for furnishing emergency supplies of drinking water. The method of furnishing those supplies is not provided for in the amendment, and is left to the discretion of the Chief of Engineers. Any feasible method, including restoration of service from an alternate source when the main source has been contaminated, is authorized where most feasible (however, see paragraphs (d) and (e) of this section).

(b) The scope of work is limited solely to providing emergency supplies of clean drinking water. Sewage treatment and disposal, and other sanitary requirements, are not included. In addition, the Corps of Engineers role in providing emergency supplies is a temporary measure until the locality is able to assume their responsibility. The locality is ultimately responsible for providing supplies of drinking water.

(c) The cause of the contamination may be due to any situation, not necessarily flood related. It encompasses all situations involving a contaminated source of drinking water, whether caused by flooding or otherwise.

(d) To be eligible, a locality must be confronted with a source of water that is contaminated. The loss of clean drinking water must not be solely the result of a failure in the distribution system. For example, the emergency could be due to a failure of a reservoir purification system, and the locality might thus be faced with a contaminated source. Furnishing of emergency supplies of clean drinking water may not be undertaken in these cases since the distribution system is not considered to be a source. A loss of supply is not in itself a justification for furnishing supplies of water by the Corps of Engineers under this authority.

(e) Employment of the authority under the amendment requires a finding by the Chief of Engineers, or his delegate, that there is, in fact, a contaminated source of drinking water.

(f) The contamination must cause or be likely to cause a substantial threat to the public health and welfare. An identifiable and defined threat of impairment to the public health and welfare is considered necessary. There is no requirement, however, that actual sickness exist from contaminated water to invoke the authority. But a clear threat must be established. Lack of palatability, in itself, may not constitute a serious health threat (see § 214.9(d)).

(g) Inhabitants of the locality, rather than commercial enterprises, are identified as the group threatened. A business firm faced with contamination of water used in its process is not eligible. The drinking water used by the people in the area must be affected.

§ 214.7 Delegation of authority.

The authority to approve measures for furnishing emergency supplies of clean drinking water pursuant to the Section 82(2), Pub. L. 93-251 amendment of Pub. L. 84-99, is delegated to division engineers, up to a $50,000 expenditure for the incident. Additional obligational authority of Code 400 funds will be obtained from DAEN-CWO-E prior to authorizing the proposed added work.

§ 214.8 Exclusions.

The authority does not require correcting the contamination, or repair of water systems so that clean drinking water supplies become available again. Reestablishing community water supplies remains the responsibility of local government and other Federal programs. These methods may be employed under the authority, if they are the most feasible ways to provide emergency supplies of clean drinking water, but there is no mandate to do so. To the extent state or local governments can provide water with their own resources, the locality will be excluded from the provision of emergency supplies under Pub. L. 84-99. In general, the following situations are not considered to be appropriate for Corps action under this authority:

(a) Contamination which causes a loss of palatability, but poses no material threat to public health and welfare.

(b) Contamination, such as by bacteria, which can be reduced to a safe level by the users boiling the water.

(c) Confrontation with normal levels of impurities or contaminants in a drinking water source that does not pose substantial threat to the public health.

(d) Contamination by natural intrusions over a period of time, which are known to be occurring and which may accumulate in sufficient concentrations to pose a future health threat, but which have not yet reached the level of a present hazard.

(e) Loss or diminishing of a water source, due to such things as an earthquake or drought.

(f) Contamination of a drinking water source as a regular occurrence due to recurring events such as drought or flooding, when no corrective community action has yet been initiated.

(g) Contamination which, while posing a substantial threat to health and welfare, can be corrected by local authorities, other Federal authorities, or other appropriate means before emergency supplies are deemed necessary.

§ 214.9 Requirements.

Providing emergency supplies of clean drinking water pursuant to the emergency functions of the Corps of Engineers is supplemental to the efforts of the community. Such actions must be in accordance with both Federal and municipal authorities. Corps response must be restricted to requests for assistance received from an appropriate state official. Each request must be considered on its own merits. The factors in each case may vary, but the following should be included in the evaluation.

(a) Whether the criteria required by the law and outlined in § 214.6 have been met.

(b) The extent of state and local efforts to provide clean drinking water and their capability to do so. Corps efforts to provide temporary supplies of drinking water must be limited to measures clearly beyond the resources reasonably available to the state and locality.

(c) The adequacy of the state or local community agreement to mutually participate with the Federal government, on terms determined advisable by the Chief of Engineers, or his delegate, which must include the following:

(1) To provide, without cost to the United States, all lands, easements, and rights-of-way necessary for the authorized work.

(2) To hold and save the United States free from damages in connection with the authorized work other than negligence attributable to the United States or its contractor.

(3) To maintain and operate in a manner satisfactory to the Chief of Engineers all installed work during the emergency.

(4) To remove when determined feasible by the district engineer, at no cost to the Federal government, the installed equipment at the end of the emergency and return it to the Corps of Engineers.

(5) As soon as possible to actively initiate measures required to resolve the emergency situation.

(d) The provision of water quality statements with the request, and the identification of the threat to public health and welfare as determined by recognized authorities such as the State Health Department, Environmental Protection Agency, or recognized commercial laboratory.

(e) The identification of the affected area as a legally recognized governmental body or public entity that exercises a measure of control in the common interest of the inhabitants.

§ 214.10 Types of assistance.

The temporary emergency supplies of clean drinking water may be provided through such actions as:

(a) The use of water tank trucks to haul clean drinking water from a nearby known safe source to water points established for local distribution.

(b) Procurement and distribution of bottled water.

(c) Laying of temporary above ground water lines from a nearby safe source of water to the affected community where water points for local distribution can be established.

(d) Installation of temporary filtration.

§ 214.11 Costs.

Costs incurred by the Corps of Engineers in furnishing emergency supplies of clean drinking water are chargeable to Pub. L. 84-99 funds, 96X3125, Code 910-400 and repayment by the community generally will not be required. Costs of necessary measures for the decontamination of the water supply source are the responsibility of local governments and are not authorized under Pub. L. 84-99.

PART 220—DESIGN CRITERIA FOR DAM AND LAKE PROJECTS

§ 220.1 Low level discharge facilities for drawdown of impoundments.

(a) *Purpose.* This regulation states the policy, objectives, and procedures in regard to facilities for drawdown of lakes to be impounded by Civil Works projects.

(b) *Applicability.* This regulation is applicable to all Divisions and Districts having responsibility for design of Civil Works projects.

(c) *Policy.* It is the policy of the Chief of Engineers that all future lakes impounded by Civil Works projects be provided with low level discharge facilities to meet the criteria for drawdown set forth in this ER. Low level discharge facilities, capable of essentially emptying the lake, provide flexibility in future project operation for unanticipated needs, such as, major repair of the structure, environmental controls or changes in reservoir regulation. The criteria set forth in this ER will govern in the majority of impoundment projects. However, it may be impracticable to provide the drawdown capability to meet the criteria for certain projects because of their size (unusually small or large) or because of their unique function. Such projects may be exempt from the criteria upon presentation of information in accordance with paragraph (e) of this section.

(d) *Design criteria.* As a minimum, low level discharge facilities will be sized to reduce the pool, within a period of four months, to the higher of the following pool levels: (1) A pool level that is within 20 feet of the preproject "full channel" elevation, or (2) a pool level which will result in an amount of storage in the reservoir that is 10 percent of that at the beginning pool level. The beginning pool level for drawdown will be assigned at spillway crest for uncontrolled spillways and at top of spillway gates for controlled spillways. Inflow into the lake during the drawdown period will be developed by obtaining the average flow for each month of the year. The drawdown period inflow will then be assumed equivalent to the average

flow of the highest consecutive four-month period.

(e) *Design Study and Report Requirements.* Feasibility (survey) reports and subsequent pertinent design memoranda should include the results of studies made to determine facilities required for drawdown of impoundments. The discharge capacity required to satisfy project purposes and diversion requirements during construction may be sufficient to meet the drawdown criteria set forth in paragraph (d) of this section. Where additional capacity is required, studies will be made to determine the most practical and economical means of increasing the capacity to meet the drawdown criteria. A synopsis of the alternatives considered and details of the recommended plan should be included in the Phase II General Design Memorandum or a feature design memorandum. The reporting should include the effects of the required discharge capacity on project costs, on existing downstream projects, and on the potential for downstream damage. When, due to specific project conditions, a drawdown capacity is recommended which does not meet the criteria set forth in paragraph (d) of this section, the following information should be presented:

(1) The drawdown period using the maximum drawdown capability of the proposed project facilities, under the situation described in paragraph (d) of this section. Information should be included on the pool elevation and corresponding storage volume at end of the period.

(2) Information on facilities that would be required to meet the design criteria for drawdown, including the estimated first cost and annual cost of these facilities. If the estimated cost for such facilities is significantly greater than for the proposed project facilities, similar information on intermediate facilities should be provided.

Reporting subsequent to the Phase I General Design Memorandum should include related discharge rating curves; hydrographs with inflow, outflow and pool stage plots; lake regulation plans needed for project purposes and needed to satisfy the drawdown criteria; and other data essential in evaluating the study.

(49 Stat. 1571, 33 U.S.C. 701c)

[40 FR 20081, May 8, 1975, as amended at 40 FR 36774, Aug. 22, 1975]

PART 221—WORK FOR OTHERS

§ 221.1 Investigation and supervision of hydropower projects under the Federal Power Act (ER 1140-2-4).

(a) *Purpose.* This regulation [1] establishes procedures for executing Corps of Engineers functions under the authority of the Federal Power Act (FPA) administered by the Department of Energy, Federal Energy Regulatory Commission (FERC), formerly Federal Power Commission. Based on a specific request from FERC, these functions include:

(1) Investigation of applications filed with FERC for permits and licenses, and for relicensing of projects to ascertain impacts on Corps of Engineers responsibilities.

(2) Investigation of applications for surrender or termination of license to ascertain impacts on Corps of Engineers responsibilities.

(3) Supervision and inspection of operations of licensed hydroelectric projects to ascertain impacts on Corps of Engineers responsibilities.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) Federal Power Commission publication entitled "Federal Power Act", as amended, dated 1 April 1975. The Act was originally enacted 10 June 1920 (41 Stat. 1063, 16 U.S.C. 791-823). This publication can be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

(2) Code of Federal Regulations, Title 18, Part I to 149 relating to FERC General Rules and Regulations, available at the U.S. Government Printing Office, Washington, D.C. 20402.

[1] This regulation supersedes ER 1140-2-4, 8 December 1967, and ER 1140-2-2, 10 September 1965.

(3) ER 1145-2-303 (33 CFR 209.120), Permits for Activities in Navigable Waters or Ocean Waters.

(4) ER 1140-2-1, Submission of Data for Headwater Benefits Determination.

(d) *Definitions*—(1) *Licensed project.* A non-Federal hydroelectric project for which the FERC has issued a license granting authority for either construction, in the case of a proposed project, or for continued operation and maintenance of an existing project.

(2) *Major projects.* Hydroelectric projects with more than 2,000 horsepower installed capacity.

(3) *Minor projects.* Hydroelectric projects having installed capacity of 2,000 horsepower or less.

(4) *Preliminary permit application.* An application filed by a non-Federal entity with the FERC as a preliminary step in anticipation of filing for a license to construct and operate a hydroelectric project. A preliminary permit does not authorize construction. It merely gives the permittee priority of application for a FERC license over other non-Federal entities for a period of time. The permittee then develops information necessary for inclusion in an application for license to construct and operate a hydroelectric project. Analysis of this information may result in a decision to apply for the license or to withdraw the intent.

(5) *Relicensing.* A procedure applicable to projects for which the original period of license (usually 50 years) will expire or has expired and application for new license has been or will be filed with the FERC.

(6) *Take over.* An act whereby the Federal government assumes project ownership. Upon expiration of a license for a hydroelectric project, the United States, under certain specific conditions set forth in section 14 of the Federal Power Act may "take over", maintain and operate the project. This does not apply to any project owned by a State or local government. Take over procedures are not applicable to "Minor Projects."

(e) *Authorities.* The Federal Power Act as amended delegates to the Secretary of the Army, the Chief of Engineers and the Corps of Engineers certain functions necessary for the FERC's administration of the Act. Implementation was provided through instructions issued by the President in a letter dated 18 May 1931 to the Secretary of War. These functions are set forth in the following excerpts from the Act:

(1) Section 2 of the Act provides in part that:

> The Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army to serve the Commission as engineer officer or officers * * *.

(2) Section 4(e) of the Act provides in part that:

> The Commission is hereby authorized and empowered * * * to issue licenses to citizens of the United States, or to any associations of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization, of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction * * *.
>
> * * *Provided that no license affecting the navigable capacity of any navigable water of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army.

(f) *Investigation of application for permits, licenses, or relicensing of projects.* Upon referral by the FERC, the Chief of Engineers will assign the investigation of an application for permit, license or relicensing to the appropriate Division Engineer who will submit a report on the investigation as specified herein to HQDA (DAEN-CWE-HY) WASH DC 20314 (exempt from reports control, Paragraph 7-2y, AR 335-15). The investigation should be coordinated with all interested organization elements including Engineering, Construction/Operations, Planning and Office of the Counsel. The date that the report is to be submitted will be specified. The nature of investigation and report by the Division Engineer will depend

upon the nature of the request from the FERC. In general, reports as appropriate for the type of application filed with the Commission will consider the following items as pertinent and will include recommendation of pertinent license provisions:

(1) *License applications.* (i) The effect of the project on navigation and flood control, including adequacies of the plans of the structures affecting navigation. Section 4(e) of the Federal Power Act provides for approval of plans for hydroelectric power projects as noted in paragraph (e)(2) of this section. Section 4(e) approval normally will obviate the need for a Department of Army permit under section 10 of the 1899 River and Harbor Act. The basis for Corps approval under section 4(e) will be limited to effects on navigation; however, section 4(e) does not obviate the need for a Department of the Army permit pursuant to section 404 of the Federal Water Pollution Control Act (see paragraph (i)(2)) of this section. Such a permit is subject to a full public interest review pursuant to 33 CFR Part 320 and the application of the Environmental Protection Agency's guidelines in 40 CFR Part 230.

(ii) Recommendations for license provisions required to protect the interest of navigation. This item is discussed under paragraphs 7, 8 and 9.

(iii) Consideration of the project in relation to a comprehensive plan for developing the basin water resources from the standpoint of the Corps of Engineers' programs and responsibilities. Specific references should be made to pertinent published Congressional documents containing results of studies and/or to Congressional resolutions directing studies to be made to provide identification.

(iv) Consideration of environmental aspects of a project as related to navigation and flood control matters or other specific Corps interests and responsibilities in particular cases.

(v) The matter of possible redevelopment of an existing project to improve the usefulness of the project in relation to the objectives of the Corps program in the basin. In the case of an unconstructed project, based on request from the Commission, a recommendation along with justification, should be included as to whether or not development should be undertaken by the United States.

(vi) Consideration of structural safety and adequacy of spillway design flood for FERC licensed projects are the responsibility of the FERC. The Dam Safety Act, Pub. L. 92-367 provides that dams constructed pursuant to license issued under the authority of Federal Power Act are specifically exempted from the Corps National inspection program. This does not preclude the Corps District and Division offices from making comments on license applications for the FERC information, about any design deficiencies that are brought to their attention.

(2) Relicensing (New License) Application.

(i) Consider paragraphs (f) (1) through (6) of this section.

(ii) Recommendations should be furnished to the FERC with respect to possible need for "take over" of a project by the Federal Government. Details on "take over" under the Federal Power Act are provided in Part 16 of the Code of Federal Regulations, Title 18 (Part 1 to 149). A copy of Part 16 is provided for ready reference in Appendix A of this part.

(iii) FERC Preliminary Permit Application. Consider appropriate recommendations to insure coordination of applicant's studies with the Division or District Engineer in cases where responsibilities and interests of the Corps of Engineers would be affected. The report should include discussion of Corps interests which could result in recommendations for provisions to be included in a subsequent license. In general proposed construction of power facilities at or in conjunction with a Corps reservoir project will be reviewed with the objective of recommending design, construction and operation factors that the applicant must consider in its studies in order for the proposed power development to be compatible, physically and economically, with the authorized function of the Corps project(s).

(g) *Terms and conditions for insertion in FERC permits and licenses.* In investigation of an application for FERC license or permit, consideration

will be given to aspects of the project affecting authorized functions of the Corps as well as to the responsibilities assigned to the Corps by the Federal Power Act. Accordingly, the Division engineer in his report on an application to the Chief of Engineers will always consider the necessity for including in any license or permit terms and conditions to protect the interests of navigation. Recommendations involving other responsibilities of the Corps in the area of water control management such as flood control, low flow augmentation minimum instantaneous releases, and other purposes should also be considered.

(h) *Standard terms and conditions used by the FERC in its permits and licenses.* Appendix B to this Regulation includes standard terms and conditions used by the FERC in licenses for projects affecting navigable waters of the U.S. The standard articles, included in Appendix B, are identified by the FERC in the following Forms:

(1) Form L-3 (Revised October 1975)

Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States.

(2) Form L-4 (Revised October 1975)

Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters of the United States.

Any special terms and conditions pertaining to the Corps of Engineers responsibilities, in addition to those identifed in Appendix B should be tailored to suit the situation involved. Appendix B also provides a list of other FERC standard articles Forms that could be obtained from FERC offices.

(i) *Distinction between Corps of Engineers and FERC jurisdiction with respect to non-Federal Hydroelectric projects.* (1) The following procedures are currently being followed in connection with Department of Army permit responsibilities involving pre-1920 legislation:

(i) In regard to FERC licensing of projects, Corps responsibilities under Section 10 of the River and Harbor Act of 1899, for power related activities, may normally be met through the FERC licensing procedure including insertion of terms and conditions in the license of the interest of navigation. Section 4(e) of the Federal Power Act provides for approval of plans of project works by the Chief of Engineers and Secretary of the Army from the standpoint of interests of navigation. The consideration for our approval under Section 4(e) will be limited to effects of project power related activities on navigation.

(ii) Applications to Corps Divsion or District Engineers for approval of repairs, maintenance or modification of non-Federal water power projects authorized under River and Harbor Acts as well as special Acts of Congress prior to 1920, or requests for advice with respect thereto should be referred to the FERC for consideration in accordance with the provisions of the Federal Power Act. The permittee should be advised that the application is being referred to the FERC for consideration and that if a FERC license is required Corps recommendations will be furnished to the FERC.

(2) Responsibilities under Section 404 of the Federal Water Pollution Control Act as amended in 1972 (33 U.S.C. 1151) pertinent to discharge of dredged or fill material into the navigble waters at specified disposal sites will be met only through the Department of Army permit procedures as specified in ER 1145-2-303. In regard to FERC cases involving Section 404, our report to the FERC through (DAEN-CWE-HY) will specify the need for a Department of Army permit. (Section 404) if, on the basis of the Division and District Engineers' reports, such permit is deemed necessary. A Department of the Army permit will be required for any portion of a proposed project which involves the discharge of dredged or fill material into the waters of the United States. This includes the placement of fill necessary for construction of a project's dam and appurtenant structures.

(3) When applicable, FERC will be advised that the requirement for Department of the Army permit pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 for the transport of dredged material from the project site for the

purpose of dumping it into the ocean waters will be met only through the Department of the Army permit program.

(4) In connection with FERC licensed projects there may be proposed non-power water oriented activities, such as recreational development, which are associated with the overall project but may not be a part of the hydroelectric power facilities at the project. Such cases, if involving navigable waters should be reviewed from the standpoint of need for a Section 10 permit. Such Section 10 permit actions would involve consideration of the overall public interest, including water quality, fish and wildlife, recreation, general environmental concerns and the needs and welfare of the people. Corps responsibilities for permit requirements under Section 10 of the River and Harbor Act of 1899 for non-power activities affecting navigable waters at the FERC projects will be met only through the Corps permit procedures. The Corps' report to FERC through (DAEN-CWE-HY) will specify the need for such permit when recommended by the Division and District Engineers' report.

(j) *Investigation of applications for surrender or termination of license.* The period of the FERC license for hydroelectric projects is usually 50 years. During and/or upon the expiration of the period of a license, a licensee may file with the FERC an application for surrender or termination of its license. These applications may encompass requests for physical removal of an existing dam and/or powerhouse structures from a stream. Division Engineers who would be assigned by the Chief of Engineers to review such applications will consider, in their review and report to DAEN-CWE-HY, the possibility that sediment discharge resulting from removal of a dam structure from a navigable river or from any site that may affect navigable waters would impair the anchorage and navigation and/or flood carrying capacity of the stream. In cases where there is a possibility of significant downstream shoaling (sedimentation) as the result of removal of a dam and its appurtenant structures, recommendation may be made to the FERC, through DAEN-CWE-HY, requiring licensee as a condition of approval of dam removal to agree to bear the expense for removal of any shoaling at the navigable river(s) which would be determined by the Corps to be detrimental to navigation. Other recommendations to be considered include gradual lowering of a dam over a period of time and/or possibility of sediment removal prior to dam removal. It should also be noted that a Department of the Army permit under Section 404 of the Federal Water Pollution Control Act amendments of 1972 (33 U.S.C. 1151), as discussed in Paragraph 9b of this regulation, may be needed in connection with removal of dams on or affecting the navigable waters if a discharge of dredged or fill material also occurs during the removal operation. Other recommendations within the Corps authority that should be considered in reviewing applications for surrender or termination of licenses for projects where their power facilities have been removed, or recommended for removal, is that upon any approval of such application by the FERC, continuation of existence of the nonpower project on or affecting the navigable waters of the U.S. will require a Department of the Army permit in compliance with Section 10 of the River and Harbor Act of 1899. Furthermore, it should be noted that in the absence of FERC nonpower use license, pursuant to 16 U.S.C. 808(b), the structural safety and maintenance of dam and reservoir for a nonpower project will be governed by the laws and regulations of the State in which the project is located.

(k) Supervision and Inspection of Operation of Licensed Hydroelectric Projects. Corps Division and District Engineers responsibilities with respect to any project affecting navigable waters include surveillance of operation and maintenance to insure that the interests of navigation are not adversely affected. In addition, in certain cases the Corps, at the request of the FERC, may act as agent for the FERC for overall supervision of project operation and maintenance. Corps Division Engineers have, in the past, represented the FERC in supervision and in-

spection of a number of FERC licensed projects within their respective divisions. The Commission by letter dated March 4, 1976 relieved the Corps of Engineers from acting as the Commission's representative for supervision and inspection of its licensed projects. This responsibility has been transferred by the Commission to its own regional engineers. There are no requirements for any periodic or annual reports from the Division offices regarding the operation of FERC licensed hydroelectric projects. However, Division Engineers will report to DAEN-CWE-HY on a current basis any significant detrimental effects with respect to Corps of Engineers responsibilities or other matters which come to their attention.

(l) Safety of Licensed Hydroelectric Projects. The Dam Safety Act, Public Law 92-367, provides that dams constructed pursuant to licenses issued under the authority of the Federal Power Act are specifically exempted from the national inspection program administered by the Corps. However, the law further provides that the Secretary of the Army upon request of the FERC may inspect dams which have been licensed under the Federal Power Act. The Commission by letter dated August 29, 1972 informed the Corps that the Commission does not expect to request the Corps' assistance for inspecting the projects licensed under the Federal Power Act.

(m) *Supervision of construction of licensed hydroelectric projects.* In cases where the FERC may request the Corps to supervise the actual construction of licensed hydroelectric project on behalf of the Commission, instructions will be furnished to the appropriate District Engineer through the Division Engineer at the time the request is made.

(n) *Other investigation under the Federal Power Act.* Corps of Engineers operations under the Federal Power Act also include participation in FERC procedures in determining headwater benefits from Corps reservoir projects (RCS, 1461-FPC). This matter is discussed in ER 1140-2-1.

(o) *Funding of operations under the Federal Power Act.* (1) The salaries of the Corps of Engineers personnel involved in investigations discussed herein will be charged against funds for "Special Investigations" under the appropriation for "General Expenses." The FERC may provide reimbursement if requested by the Chief of Engineers to cover the nonpersonal expenses which may be incurred in the investigation and supervision of projects under permits and licenses.

(2) Non-personal costs amounting to less than $100 for any single investigation will not be reimbursed from the Commission funds but will be charged also to "Special Investigations" under the appropriations for "General Expenses." Each Division Engineer charged with a detailed investigation of an application for license or the supervision of a project that will require more than a nominal amount of nonpersonal costs will be specifically requested to submit an estimate of the funds required upon assignment of the work by the Chief of Engineers.

(3) Reimbursement from the FERC funds for nonpersonal costs in excess of $100 will be made by the Chief of Engineers upon submission of a voucher on Standard Form 1080 by the District Engineer through the Division Engineer. The voucher will show the fiscal year during which the work was done and the Commission project number on which the money was spent.

Appendix A—Part 16—Procedures Relating to Takeover and Relicensing of Licensed Projects

Sec.

16.1 Purpose and coverage.
16.2 Public notice of projects under expiring license.
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Sec.
16.12 Renewal of minor and minor part licenses not subject to sections 14 and 15.
16.13 Acceptance for filing or rejection of application.

AUTHORITY: Federal Power Act, secs. 7(c), 14, 15, 309 (16 U.S.C. 800, 807, 808, 825h.

SOURCE: Order 141, 12 FR 8461, Dec. 19, 1947; as amended by Order 175, 19 FR 5212, Aug. 18, 1954; Order 260, 28 FR 814, Jan. 11, 1963; 28 FR 1680, Feb. 21, 1963; 28 FR 2270, Mar. 8, 1963; Order 288, 29 FR 14106, Oct. 14, 1964; Order 384, 34 FR 12269, July 25, 1969 and as otherwise noted.)

§ 16.1 *Purpose and coverage.*

This part implements the amendments of sections 7(c), 14, and 15 of Part I of the Federal Power Act, as amended, enacted by Public Law 90-451, 82 Stat. 616, approved August 3, 1968. It applies to projects subject to sections 14 and 15 of the Federal Power Act including projects for which a nonpower license may be issued. Procedures are provided for the filing of applications for either power or nonpower licenses for projects whose licenses are expiring. A license for a power project issued to either the original licensee or another licensee is referred to in this part as a "new license" and a license for a nonpower project as a "non-power license". Also provided are procedures for the filing of recommendations for takeover by Federal departments or agencies and applications for renewal of licenses not subject to section 14.

§ 16.2 *Public notice of projects under expiring license.*

In order that there should be adequate notice and opportunity to file timely applications for a license the Commission's Secretary will give notice of the expiration of license of a project (except transmission line and minor projects) 5 years in advance thereof in the same manner as provided in section 4(f) of the Act. The Secretary shall upon promulgation of the rules herein give notice, as provided in section 4(f) of the Act, of all whose license terms have expired since January 1, 1968, or which will expire within 5 years of the effective date of this rule. In addition, the Commission each year will publish in its annual report and in the FEDERAL REGISTER a table showing the projects which will expire during the succeeding 5 years. The table will list these licenses according to their expiration dates and will contain the following information: (a) License expiration date; (b) licensee's name; (c) project number; (d) type of principal project works licensed, e.g., dam and reservoir, powerhouse, transmission lines; (e) location by State, county, and stream; also by city or nearby city when appropriate; and (f) plant installed capacity.

§ 16.3 *When to file.*

(a) An existing licensee must file an application for a "new license" or "nonpower license" or a statement of intention not to file an application for a "new license" no earlier than 5 years and no later than 3 years prior to the expiration of its license, except that, where the license will expire within 3½ years of the issuance of this part, such applications or statements shall be filed within 6 months from the effective date of this part. Applicants which have applications pending which were filed under previous Commission regulations shall supplement their applications in accordance with pertinent provisions of this part within 6 months of the effective date of this part.

(b) Any other person or municipality may file an application for a "new license" or "non-power license" within 5 years of the expiration of the license, but in no event, unless authorized by the Commission, later than 6 months after issuance of notice of the filing of an application or statement by the licensee under § 16.4 or 2½ years before the expiration of the license, whichever is earlier.

(c) Any application submitted after the expiration of the time specified herein for filing must be accompanied by a motion requesting permission to file late, which motion shall detail the reasons of good cause why the application was not timely filed and how the public interest would be served by its consideration.

§ 16.4 *Notice upon filing of application.*

When any timely application or statement within the meaning of § 16.3 is received, or when the Commission grants any motion for consideration of a late filed application, notice of receipt thereof will be furnished the applicant, and public notice will be given in the same manner as provided in sections 4(f) and 15(b) of the Act (49 Stat. 838; 41 Stat. 1072; 82 Stat. 616; 16 U.S.C. 797, 808) §§ 1.37 and 2.1 of this chapter, the Fish and Wildlife Coordination Act, 48 Stat. 401, as amended, 16 U.S.C. 661 *et seq.*, and by publication in the FEDERAL REGISTER.

§ 16.5 *Annual licenses.*

No application for annual license need be filed nor will such application be accepted under section 15 of the Act. An existing licensee making timely filing for a new license will be deemed to have filed for an annual license. If the Commission has not acted upon an application by licensee for a new license at the expiration of the license terms, by the issuance of an order granting, denying or dismissing it, an annual license shall be issued by notice of the Secretary.

§ 16.6 *Applications for new license for projects subject to sections 14 and 15 of the Federal Power Act and all other major projects.*

(a) Each application for a new license hereunder shall conform in form to § 131.2 of this chapter, and shall set forth in appropriate detail all information and exhibits prescribed in §§ 4.40 through 4.42 of this chapter, inclusive and in § 4.51 of this chapter, as well as additional information specified in paragraphs (b) through (e) of this section, except that Exhibit A may be incorporated in an application by reference where one applicant files applications for several projects, one of which already contains an Exhibit A or in any case where applicant has filed an Exhibit A within 10 years preceding the filing of the application, and that Exhibits N and O as specified in § 4.41 of this chapter need only be filed as provided in paragraph (c) of this section. An original and fourteen conformed copies of the application and all accompanying exhibits shall be submitted to the Commission plus one additional conformed copy for each interested State Commission.

(b) An application for a "new license" hereunder shall include a statement showing the amount which licensee estimates would be payable if the project were to be taken over at the end of the license term pursuant to the provisions of sections 14 and 15 of the Federal Power Act. This statement shall include estimates of: (1) Fair value; (2) net investment; and (3) severance damages. (This subsection is not applicable to State, municipal, or nonlicensee applicants.)

(c) If the applicant proposes project works in addition to those already under license, the maps, plans, and descriptions of the project works (Exs. I, J, L and M) shall distinguish the project works of parts thereof which have been constructed from those to be constructed. Exhibits N and O shall also be included in the application relating to new construction.

(d) Applicant shall furnish its plans for the future modification or redevelopment of the project, if any, and shall set forth in detail why technically feasible, additional capacity is not proposed for installation at the time of relicensing.

(e) Applicant shall file a statement on the effect that takeover by the United States or relicensing to another applicant would have upon the supply of electric energy to the system with which it is interconnected, the rates charged its customers, the licensee's financial condition, and taxes collected by local, State, and Federal Governments. (This subsection is not applicable to State, municipal or nonlicensee applicants.)

§ 16.7 *Application for nonpower license.*

Each application for "non-power license" shall generally follow the form prescribed in § 131.6 of this chapter, except for subsections 7 and 8 thereof. It shall be accompanied by Exhibits K, L, R, and S prepared as described in section 4.41, and shall include the information specified in paragraphs (a) through (c) of this section. Unless otherwise specified, an original and 14 conformed copies of the application and all accompanying exhibits shall be submitted with one additional conformed copy for each interested State commission. Additional information may be requested by the Commission if desired.

(a) Applicant shall furnish a description of the nonpower purpose for which the project is to be utilized and a showing of how such use conforms with a comprehensive plan for improving or developing a waterway or waterways for beneficial uses, including a statement of the probable impact which conversion of the project to nonpower use will have on the power supply of the system served by the project.

(b) Applicant shall identify the State, municipal, interstate or Federal agency, if any, which is authorized or willing to assume regulatory supervision over the land, waterways and facilities to be included within the nonpower project. (If there is such an agency, applicant shall foward one copy of the application to such agency.)

(c) Applicant shall submit a proposal for the removal or other disposition of power facilities of the project.

A "non-power license" shall be effective until such time as in the judgement of the Commission a State, municipal, interstate, or Federal agency is authorized and willing to assume regulatory supervision over the land, waterways, and facilities included within the "non-power license" or until the project structures are removed. Such State, municipal, interstate or Federal agency may petition the Commission for termination of a "non-power license" at any time. Where the existing project is located on the public lands or reservations of the United States, and there is no application for relicensing as a power project either by the original licensee, or some other entity, or a takeover recommendation, the Commission may, in its discretion, and upon a showing by the agency having jurisdiction over the lands or reservations that it is prepared to assume requisite regulatory supervision for the nonpower use of the project, terminate the proceeding without issuing any license for nonpower use.

§ 16.8 *Departmental recommendations for takeover.*

A recommendation that the United States exercise its right to take over a project may

be filed by any Federal department or agency no earlier than 5 years and no later than 2 years prior to the expiration of the license term; *Provided, however,* That such recommendation shall not be filed later than 9 months after the issuance of a notice of application for a new license. Departments or agencies filing such recommendations shall thereby become parties to the relicensing-takeover proceeding. An original and 14 copies of the recommendation shall be filed together with one additional copy for each interested State commission. The recommendation shall specify the project works which would be taken over by the United States, shall include a detailed description of the proposed Federal operation of the project, including any plans for its redevelopment and shall indicate how takeover would serve the public interest as fully as non-Federal development and operation. It shall also include a statement indicating whether the agency making the recommendation intends to undertake operation of the project. A copy of the recommendation shall be served upon the licensee by the Commission's Secretary. Any applicant for a new license covering all or part of the project involved in the takeover recommendation shall have 120 days within which to serve a reply to the recommendation upon the Commission with copies to any parties in the proceeding.

§ 16.9 *Commission recommendation to Congress.*

If the Commission, after notice and opportunity for hearing, concludes upon departmental recommendation, a proposal of any party, or its own motion, that the standards of section 10(a) of the Act would best be served if a project whose license is expiring is taken over by the United States, it will issue its findings and recommendations to this effect, and after any modification thereof, upon consideration of any application for reconsideration, made in conformity with the provisions of § 1.34 of this chapter governing applications for rehearing, forward copies of its findings and recommendations to the Congress.

§ 16.10 *Motion for stay by Federal department or agency.*

If the Commission does not recommend to the Congress that a project be taken over, a Federal department or agency which has filed a timely recommendation for takeover as provided in this part may, within thirty (30) days of issuance of an order granting a license, file a motion, with copies to the parties in the proceeding, before the Commission requesting a stay of the license order. Upon the filing of such a motion, the license order automatically will be stayed for 2 years from the date of issuance of the order, unless the stay is terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission will notify Congress of any such stay. Upon expiration or termination of the stay, including any extension thereof by act of Congress, the Commission's license order shall automatically become effective in accordance with its terms. The Commission will notify Congress of each license order which has become effective by reason of the expiration or termination of a stay.

§ 16.11 *Procedures upon congressional authorization of takeover.*

A determination whether or not there is to be a Federal takeover of a project would ultimately be made by Congress through the enactment of appropriate legislation. If Congress authorizes takeover, the Secretary will immediately give the Licensee not less than 2 years' notice in writing of such action. Within 6 months of issuance of such notice the Licensee shall present to the Commission any claim for compensation consistent with the provisions of section 14 of the Federal Power Act and the regulations of the Commission.

§ 16.12 *Renewal of minor or minor part licenses not subject to sections 14 and 15.*

Licenses whose minor or minor part licenses are not subject to sections 14 and 15 of the Act and wish to continue operation of the project after the end of the license term shall file an application for a "new license" 1 year prior to the expiration of their original license in accordance with applicable provisions of part 4 of this chapter.

§ 16.13 *Acceptance for filing or rejection of application.*

Acceptance for filing or rejection of applications under this part shall be in accordance with the provisions of § 4.31 of this chapter.

Appendix B—Federal Energy Regulatory Commission Form L-3 (Revised October 1975)

Terms and conditions of license for constructed major project affecting navigable waters of the United States

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the

Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgement have produced or will produce any of such results shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Comr ission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and projects works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in projects lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsiblity

for payment and discharge of, all liens or encumbrances upon the projects or project property created by the Licensee or created or incurred after the issuance of the license: *Provided*, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all time be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive devel-

opment of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding of eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided*, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for

the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representatives of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 28. The terms and conditions expressly set forth in the license shall not be constructed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

FEDERAL ENERGY REGULATORY COMMISSION

FORM L–4 (REVISED OCTOBER, 1975)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhib-

its, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alterations thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within 5 years from the date of issuance of the license, shall acquire title in fee or other right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or

tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the License: *Provided,* That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall re-

lease water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided,* That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 28. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and condi-

tions of the Federal Power Act which are not expressly set forth herein.

LIST OF FPC STANDARD ARTICLES FORMS USED IN PERMITS AND LICENSES FOR HYDROELECTRIC PROJECTS

[The following FPC standard articles Forms, in addition to the standard Forms L–3, and L–4 which are provided in this appendix, are available from the FPC offices:]

FPC Forms: [1]	Title
P–1	Terms and conditions of preliminary permit.
L–1	Terms and conditions of license for constructed major project affecting lands of the United States.
L–2	Terms and conditions of license for unconstructed major project affecting lands of the United States.
L–5	Terms and conditions of license for constructed major projects affecting navigable waters and lands of the United States.
L–6	Terms and conditions of license for unconstructed major project affecting navigable waters and lands of the United States.
L–9	Terms and conditions of license for constructed minor projects affecting navigable waters of the United States.
L–10	Terms and conditions of license for constructed major project affecting the interests of interstate or foreign commerce.
L–11	Terms and conditions of license for unconstructed major project affecting the interests of interstate or foreign commerce.
L–14	Terms and conditions of license for unconstructed minor project affecting navigable waters of the United States.
L–15	Terms and conditions of license for unconstructed minor project affecting the interests of interstate or foreign commerce.
L–16	Terms and conditions of license for constructed minor project affecting lands of the United States.
L–17	Terms and conditions of license for unconstructed minor project affecting lands of the United States.
L–18	Terms and conditions of license for constructed minor project affecting navigable waters and lands of the United States.
L–19	Terms and conditions of license for unconstructed minor project affecting navigable waters and lands of the United States.

[1] Revised Oct. 1975.

(Secs. 2 and 4(e) of the Federal Power Act of 1920 (41 Stat. 1603, 16 U.S.C. 791–823), as amended; sec. 10 of the River and Harbour Act of 1899 (30 Stat. 1151, 33 U.S.C. 403); and sec. 404 of Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816, 33 U.S.C. 1344))

[43 FR 4979, Feb. 7, 1978]

PART 222—ENGINEERING AND DESIGN

Sec.

222.2 Periodic inspection and continuing evaluation of completed civil works structures.
222.3 Inspection and evaluation of Corps of Engineers bridges.
222.4 Acquisition of lands downstream from spillways for hydrologic safety purposes.
222.5 Clearances for power and communication lines over reservoirs.
222.6 Reporting earthquake effects.
222.8 National Program for Inspection of Non-Federal Dams.

§ 222.2 Periodic inspection and continuing evaluation of completed civil works structures.

(a) *Purpose.* This regulation [1] defines objectives, states policy, assigns responsibilities, and establishes procedures by which the Corps of Engineers carries out its responsibilities for assuring the continuing structural adequacy of its major Civil Works structures in service.

(b) *Applicability.* This regulation is applicable to all Divisions and Districts having Civil Works responsibilities.

(c) *References.* (1) ER 1110-2-99, Inspection and Evaluation of Corps of Engineers Bridges.

(2) ER 1110-2-101, Reporting of Evidence of Distress of Civil Works Projects.

(3) ER 1110-2-1150, Post-Authorization Studies.

(4) ER 1110-2-8150, Investigations to Develop Design Criteria for Civil Works Construction Activities.

(d) *Objective.* Civil Works structures whose failure or partial failure would endanger the lives of the public or cause substantial property damage will be continuously evaluated to insure their structural safety and stability, and operational adequacy. Such evaluations, based upon periodic inspections supported when appropriate by programs of instrumentation, will be conducted to detect conditions of significant structural distress or operational

[1] This regulation supersedes ER 1110-2-100, dated 30 Nov. 72.

inadequacy and to provide a basis for timely initiation of restorative and remedial measures.

(e) *Policy.* Major Civil Works structures covered by this regulation include flood control and multipurpose dams, navigation locks and dams, powerhouses, and appurtenant structures (intakes, outlet works, tunnels, spillways) which are operated by the Corps of Engineers and for which the Corps is fully responsible. Also included are major levees, floodwalls, pumping stations and similar facilities designed and constructed under Corps of Engineers jurisdiction and for which the Corps has a public obligation for being aware of their structural safety and stability although not responsible for their maintenance and operation.

(1) For those projects constructed by the Corps of Engineers and then operated by others, transfer of this responsibility should not preclude Corps participation in the inspections, if desirable. At the time of transfer of the responsibility for operation, the operating entity should be informed of the inspections and observations considered appropriate, and arrangements should be made for any such participation by Corps of Engineers personnel. However, these inspections and observations will be the responsibility of the operating entity.

(2) Where ownership of major elements of a project is divided between the Corps of Engineers and other organizations, governmental or private, the Corps will inspect those features of the non-Corps elements which could endanger the stability, safety or operation of the Corps-owned portion of the project.

(3) The policy, responsibility and interest of the Corps in regard to non-Federal dams is contained in ER 1110-2-101. Non-Federal dams located upstream of a Corps project would be the greatest concern to the safety of the Corps project. It may be appropriate, at the time of inspection of the Corps project, to include a visit to the upstream non-Federal dam for the purpose of evaluating the safety of the structures and the operational capabilities or limitations which may influence the safety of the Corps project.

(4) Excluded from this regulation are those public highway bridges owned or maintained by the Corps which are covered under the provisions of ER 1110-2-99, and all other bridges constructed by the Corps as a part of Civil Works projects but whose maintenance and operation are the responsibility of others.

(f) *Funding.* The funds needed for the evaluation and inspection program will be applied from allocations made to the various projects for the fiscal year in which the inspection is made. Travel and per diem costs incurred by personnel of the Division Office or the Office, Chief of Engineers will be covered in the same manner. Funds will be programed by the Districts for the periodic inspection and evaluation of the structures scheduled in each fiscal year.

(1) Funding for the evaluation and inspection program during construction will be under Cost Code 51, Appropriation 96X3122, Construction, General. The Term "during construction" is defined as the period from the beginning of construction to the time when project components are placed into operation for their beneficial purposes.

(2) Funding for the evaluation and inspection program after the project components are placed in operation for their beneficial purposes will be under Appropriation 96X3123, Operation and Maintenance, General.

(g) *Inspection and evaluation program.* Structures for which programs will be established will be selected on the basis of their size, importance, or the potential hazard they present. Division Engineers will be responsible for the selection of structures to be included in the inspection and evaluation program and for maintaining a list of the selected structures, schedule for inspections and status of reports. This information will be furnished HQDA (DAEN-CWE-BB) WASH DC 20314 at the end of each fiscal year. Any changes or additions to the list will be furnished as soon as they are established.

(1) A detailed systematic technical inspection will be made of the condition of each selected structure at periodic intervals, taking into account its

distinctive features to evaluate the structural safety and stability and operational adequacy. A formal technical report will be prepared for permanent record and reference purposes and to form a basis for major remedial work when required. The report will contain the results of the inspection including summaries of instrumentation observations, the evaluation of the safety of the structure and recommendations and cost estimates for remedial work when appropriate. When the need for remedial work is not urgent and additional studies are required, the recommendations may include a proposal to include the additional studies under authority of Section 216 of the Flood Control Act of 1970. The inspection reports shall be submitted for review and approval withing 120 days of the inspection. Reports may be approved by the Division Engineer except as follows:

(i) Those reports which were prepared in Division Offices.

(ii) Those reports of inspections where OCE was represented and the resulting trip report contains a request that the inspection report be submitted to OCE for approval.

Information copies of reports approved by Divison Engineers will be furnished DAEN-CWE-BB, including submittal and approval correspondence.

(2) The inspection, evaluation and reporting procedures will be in accordance with Appendix A.

(3) For projects where ownership of major elements is divided between the Corps and others (paragraph (e) of this section), information pertinent to project elements owned by others noted during the Corps inspection should be furnished to the owner. For hydroelectric power projects under purview of Part 12 of the Regulations under the Federal Power Act (18 CFR Part 12), such information could be made available to the Federal Power Commission, upon request. Owners of such FPC licensed facilities should be advised that the information made available by the Corps will not be presented to the FPC as representing results of inspections performed for the Licensee by the Corps.

(h) *Instrumentation.* Instrumentation will be incorporated in the selected structures as appropriate to measure forces, pressures, loads, stresses, strains, displacements, deflections or other conditions related to structural safety and stability. Whenever feasible, instrumentation and prototype testing programs undertaken under ER 1110-2-8150 will be utilized in the safety evaluation program. The scope of the instrumentation facilities will be indicated in the feature design memorandum prepared to summarize the instrumentation program for the entire project (including facilities, observation frequencies and arrangements for processing the collected data) prepared in accordance with ER 1110-2-1150. Guidance for instrumentation facilities is contained in Appendix A.

(i) *Responsibilities.* (1) The engineering divisions of the district offices will formulate the inspection and instrumentation plans, process and analyze the results of the instrument observations, evaluate the condition of the structure, conduct the periodic inspections, and prepare the inspection reports.

(2) The engineering divisions of the district offices will be responsible for the installation of the instrumentation devices and for data collection during the construction period.

(3) The operations divisions of the district offices will be responsible for data collection after the construction period in accordance with the instrument observation programs, and will assist and participate in the periodic inspections.

(4) The engineering divisions of the division offices will review and monitor the data collection, processing, evaluation, and inspection activities. This element will be specifically responsible for the establishment of procedures for promptly informing HQDA (DAEN-CWE) WASH DC 20314 when evaluation of the condition of the structure or analyses of the instrumentation data indicate the stability of a structure is questionable.

(j) *Emergency situations.* This regulation does not contravene the reporting procedures for emergency situations set forth in ER 1110-2-101.

APPENDIX A—PROCEDURES FOR INSPECTION AND EVALUATION PROGRAM

(a) *Data.* Engineering data relating to the project structures will be collected and permanently retained in appropriate file facilities at the project administrative headquarters on the project site. The data should consist of design memoranda, subsurface exploration results, laboratory reports, as-built drawings, and pertinent construction records. These documents and drawings will be considered as permanent engineering data, subject to retirement and disposal only upon termination of operation of the project. These data will include, where available:

(1) Principal Design Assumptions and stability and stress analyses, slope stability, seepage and settlement analyses, consolidation, shear, permeability, compaction, and classification tests or summaries thereof.

(2) Typical as-built plans, elevations, and sections.

(3) Selected as-built drawings of important project features, to include details such as instrumentation, internal drainage, transition zones or relief wells.

(4) Foundation data and geological features, including boring profiles.

(5) Location of borrow areas and identification of embankment, filter and riprap materials.

(6) As-built properties of foundation and embankment materials, such as shear strength, unit weight, water content and classification. The number of control tests and undisturbed record sample tests should be included.

(7) Identification of concrete material sources.

(8) Physical, chemical and thermal properties of concrete and concrete materials.

(9) Summary of concrete mixture proportions and control procedures.

(10) Construction history, including diversion scheme and construction sequence shown on appropriate drawings.

(11) Instrumentation observations and observation records.

(b) *Basic Structural Safety Instrumentation Programs.* There will be provided during the design and construction stages appropriate instrumentation facilities for measuring:

(1) Concrete Dams Under 150 Feet in Height:

(i) Hydrostatic uplift magnitudes and gradients under one or more monoliths.

(ii) Rates of inflow into the interior drainage system from foundation, face and joint drains.

(iii) Displacement or changes in the position of each individual monolith with respect to the dam axis, usually at the roadway level.

(2) Concrete Dams, 150 Feet or Over in Height. Provide some basic instrumentation facilities as required for dams under 150 feet in height. In addition, provide appropriate instrumentation facilities suitable for measuring:

(i) Deflection and tilting of one or more of the higher monoliths in the dam, usually by means of long plumb lines suspended within and from near the top of the structure.

(ii) In geographical regions of possible significant seismic activity, response of the structure to earthquake forces.

(3) Other Concrete Structures. Instrumentation for the determination of the integrity or safety of other types of concrete structures included in the safety evaluation program may consist of one or more of the following as appropriate:

(i) High-order triangulation or alignment surveys.

(ii) First-order elevation surveys.

(iii) Tilting.

(iv) Internal strains.

(v) External deformations.

(4) Earth and Rock-fill Structures.

(i) Settlement of the foundation due to the applied loads of the embankment and/or structural features such as the intake tower, tower bridge, conduit or tunnel.

(ii) Settlement within the embankment.

(iii) Pore pressures within the embankment and/or foundation.

(iv) Horizontal movement of the embankment and/or foundation.

(v) Horizontal or vertical displacement of structural features on or within the embankment or foundation.

(vi) Seepage quantities through and under the embankment, or through the foundation or abutments.

(c) *Location and type of instrumentation—(1) Concrete structures.* Technical practices for the preparation, fabrication, installation and observation of instruments and facilities for observing the behavior of concrete structures are given in EM 1110-2-4300, "Instrumentation for Measurement of Structural Behavior of Concrete Gravity Structures."

(2) *Earth and rock-fill structures.* Technical practices for the preparation, fabrication, installation and observation of instruments and facilities for observing the behavior of earth and rockfill structures are given in EM 1110-2-1908, "Instrumentation of Earth and Rockfill Dams."

(d) *Special Structural Safety Instrumentation Programs.* Whenever during the planning, design, construction or operation of a project, physical conditions are encountered or are expected to be encountered which would significantly affect the stability of a structure, appropriate instrumentation will be provided to detect, measure, or observe

their effect on the structure. Any of the following conditions require instrumentation.

(1) *Joint movement.* Changes in joint widths and relative vertical displacements of opposite joint faces at monolith joints indicating nonelastic tilting or twisting movements.

(2) *Foundation deformation.* Excessive vertical consolidation of weak layers of stratified foundations and horizontal shear-type displacements within the foundation resulting from subsequent loading of the structure should be measured.

(3) *Seismic effects.* Strong-motion accelerometers should be used to measure response of the structure to earthquake effects and to provide comparison with other seismic instrumentation.

(4) *Hydrostatic pore pressures.* Piezometers should be installed to measure forces whose magnitude or pattern tends to overturn or otherwise adversely affect the stability of all or a portion of the structure.

(5) *Structural cracking.* Changes in crack widths and relative vertical displacement of opposite sides of crack opening, indicaing progressive growth of the crack (extent or width) or separation of the monolithic structure into two or more parts.

(6) *Internal stress conditions.* Magnitude and distribution of strains or stresses within the structure where its size, shape or configuration is expected to adversely affect these conditions to an extent not clearly established.

(e) *Instrumentation observation and observations records.* Readings of instruments and other measurements made as a part of the structural safety instrumentation program should be initiated as early in the life of the project as feasible, before the completion of construction if possible, utilizing engineering or construction staff personnel. After the project has been placed in use, instrumentation observations and collection of project operating records will be accomlished to the maximum feasible extent by project operating personnel. For those observations beyond the capability of the project staff (such as the precise alignment survey), responsibility for collecting the data or making the measurements normally will be assigned to the Engineering Division of the District Office. Designation of responsibilities and procedures for data collection will be included in the project operating manual.

(1) *Data processing and analysis.* Conversion of the Collected data to significant units and the maintenance of tabular records or graphical plots thereof will be accomplished to the maximum feasible extent within the project office. At this echelon, graphical time plots will be maintained for the hydrostatic uplift pressure data, interior drainage inflow rates, direct-reading gages at joints and cracks, and other collected instrumentation results not requiring complex mathematical or arithmetical reduction processes. Tabular records or graphical plots will be continuously maintained for examination upon short notice, and such data made available to the inspection party at the time of each periodic inspection. Division Engineers will provide permanent written instructions regarding reporting of instrumentation results, including emergency reports on unusual developments.

(2) *Evaluation of results.* Evaluation of the instrumentation data, as related to the behavior and safety of the structure, will be a continuous operation, carried out as each new set of observations is obtained, processed, and tabulated and plotted. Where the data indicate abnormal behavior, unsafe movements or deflections, or loadings which adversely affect the stability or functioning of the structure, prompt notification of such circumstances will be transmitted to the next higher echelon.

(3) *Summary of results.* Condensed tabulations or graphical plots will be prepared as required for inclusion in each general inspection report. Format and scope of the report exhibits will be determined by those responsible for preparation of the inspection report.

(f) *Inspection Program*—(1) *Procedures.* A systematic plan will be established for the inspection of those features relating to the safety and stability of the structure, providing for visual examination of:

(i) Concrete surfaces.

(ii) Structural details of bridge decks, roadways, parapets, training walls, spray walls, building walls and floors, conduits, intake towers, piers and similar features.

(iii) Structural cracking.

(iv) Joints and joint materials, including relative movements at joints between structures or portions of structures.

(v) Water passages.

(vi) Foundation drains, joint drains, face drains.

(vii) Spillways and spillway buckets.

(viii) Embankment cracks, bulging, sliding or seepage.

(ix) Condition of abutment and embankment junctions.

(x) Vertical and horizontal alignment of the embankment crest, slopes or toe area.

(xi) Unusual movement or cracking at or beyond the embankment toe.

(xii) Seepage through or under embankments or through abutments.

(xiii) Sloughing or erosion of embankment or abutment slopes.

(xiv) Condition of riprap or other slope protection.

(xv) Condition of abutments in upstream area.

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(xvi) Condition of relief wells, collector pipes, inspection manholes or other features of seepage control systems.

(2) *Checklist.* A detailed checklist should be developed for each structure, to insure adequate examination coverage of each significant structural feature. The instrumentation facilities installed will be included in the checklist to determine whether the instruments are in proper operating condition and whether data are regularly collected and analyzed. Photographs should be used freely to record conditions and changes in conditions of surfaces and structural details.

(3) *Pre-inspection brochure.* A technical brochure should be prepared in advance of the project inspection, for the purpose of familiarizing the inspection team members with the general features of the project and providing a technical summary of the structural and foundation conditions. The document would include, as appropriate, pertinent project data, layout and typical section drawings, summaries of sub-surface soil profiles and boring logs, and the checklist developed for conduting the inspection.

(4) *Review of stability.* Stability of principal concrete and earthwork structures should be reviewed, based upon current cirteria in cases where the original design criteria were less conservative. Results should be reported in the initial inspection report, or by a supplement thereto. Where the need for a comprehensive stability evaluation is indicated, requiring substantial analysis effort and supplemental field explorations, special funding provisions should be included in the next budget submission.

(5) *Examination of deteriorated concrete structures.* Concrete structures where evidence exists that extensive and significant deterioration may occur or is already in progress should be examined by means of the pulse velocity or similar exploratory technique. Scheduling of such periodic inspections should be coordinated with the U.S. Army Engineer Waterways Experiment Station.

(g) *Frequency of inspections.* The interval of inspections suggested below are for guidance in developing projected inspection schedules. These indicated intervals do not preclude more frequent inspections if deemed necessary, or less frequent inspections (subject to OCE approval and not to exceed each five years) for those structures where condition or structural integrity warrants.

(1) *Initial inspections.* The first general field inspection will be carried out immediately after topping out for new earth and rock-fill dams. The initial inspection of concrete structures will be accomplished immediately prior to impoundment of reservoir water.

(2) *Subsequent inspections.* The second inspection for earth and rock-fill dams will be made at a reasonable stage of reservoir filling, but in no case later than attainment of normal operating pool. The second inspection of concrete structures will be made when the reservoir water attains the normal operating pool but in no case later than one year after initial impoundment has begun. Subsequent inspections for concrete structures, and earth and rockfill dams and embankments will be made at one-year intervals for the next four years, at two-year intervals for the following four years, and then may be extended to each five years if warranted by the results of the previous inspections. Intervals between inspections of existing structures may be increased to five years, (subject to OCE approval) depending upon the results of the initial inspection and the size and importance of the structure.

(h) *Personnel.* Inspection teams will consist of individuals qualified by experience in the planning, design construction and operation of the project, and of individuals with appropriate specialized knowledge in structural, mechanical, electrical, hydraulic and embankment design; geology; soil mechanics; concrete materials; and construction procedures. Where feasible, a representative or representatives of OCE may be included. When the definite date for each inspection is established, OCE will be notified at least 30 days in advance in order that OCE personnel may attend if they so desire. (Exempt report, paragraph 7-2o, AR 335-15.) The District representatives on the inspection team will be responsible for the conduct of the inspection, the evaluation and the preparation of the subsequent report.

(i) *Inspection report*—(1) *General.* A condition report will be prepared to present the results of each general inspection. The title of this report should indicate the name of the project, watercourse, state, project feature, inspection number and date, in that order. An example of an appropriate title is: "Beach Fork Lake Project; Twelvepole Creek, West Virginia; Dam, Outlet Works and Spillway; Periodic Inspection Report No. 1, September 1970." Report No. 1 (report of initial inspection) will provide a general project description and present the results of the initial inspection. Reports of subsequent inspections will be supplementary to the initial report and will be numbered sequentially with the initial report; ie, report number 2 would describe inspection number 2, etc.

(2) *Initial report.* Major elements of this report, in addition to a general project description, will include:

(i) Results of examination of each feature.

(ii) Summaries of the results of the instrumentation observations.

(iii) Where appropriate, statements or exhibits summarizing the duration and frequency of spillway and control gate operations, including heads or velocities, and number of lock filling and emptying operations annually should be included.

(iv) Technical assessment of the causes of distress, or abnormal conditions, and evaluation of the behavior, movement, deformation, or loading of the structure.

(v) Photographs, where appropriate.

(vi) Recommendations for future inspections, including either confirmation of the date scheduled for the next inspection shown on the general schedule for periodic inspections previously furnished in accordance with paragraph (g) of the main text of this ER, or an alternate date if appropriate.

(vii) Proposed remedial measures and estimated costs, when appropriate, and conclusions.

(3) *Subsequent reports.* These reports will include information on items in paragraphs (i)(2)(i) through (2)(vii) of this appendix, relative to changes in conditions noted since the previous inspection.

(4) *Format.* The reports should be on 8" x 10½" paper (fold-out exhibits are acceptable).

(j) *Disposition of inspection records.* Each separate inspection report will be submitted through channels to DAEN-CWE-BB or to the Division Engineer within 120 days after the inspection is completed, in accordance with the requirements of paragraph (g)(1) of the main text of this regulation. Six copies of those reports to be approved by the Chief of Engineers will be submitted to DAEN-CWE-BB. An information copy of each report approved by the Division Engineer will be transmitted to DAEN-CWE-BB, including submittal and approval correspondence. After review, copies of the report in excess of the needs of the Chief of Engineers and of the Division Engineer will be returned to the field offices with appropriate concurrences or comments regarding proposed remedial measures, for permanent retention as a part of the project operating records. One copy of each inspection report, including submittal and approval correspondence, will be retained in DAEN-CWE-BB. The extent to which copies of inspection reports are retained in the divison office will be determined by the Division Engineer. These documents will be identified as permanent files, and will be subject to retirement only on termination of the project.

(Pub. L. 92-367, 86 Stat. 506 (33 U.S.C. 467 et seq.))

[42 FR 16134, Mar. 25, 1977, as amended at 42 FR 47204, Sept. 20, 1977]

§ 222.3 Inspection and evaluation of Corps of Engineers bridges.[1]

(a) *Purpose.* The purpose of this regulation is to define the policy, and prescribe the procedures and responsibilities for the periodic inspection and evaluation of bridges owned or maintained by the Corps of Engineers on Civil Works projects.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) ER 1110-2-100.

(2) ER 1110-2-101.

(3) Manual of Maintenance Inspection of Bridges, American Association of State Highway and Transportation Officials (AASHTO), 341 National Press Building, Washington, D.C. 20004.

(4) Bridge Inspection Training Manual, Department of Transportation, 400 7th Street, S.W., Room 3113, Washington, D.C. 20590.

(d) *Policy.* This regulation pertains to all public bridge structures, having a total length between abutments of 20 feet or more, owned or maintained by the Corps of Engineers on Civil Works projects. Public bridge structures across dams and spillways are included in the program. This program will insure the safety and integrity, by adequate inspection and maintenance, of all public bridges owned or maintained by the Corps of Engineers on Civil Works projects in compliance with the National Bridge Inspection Standards of the Federal Highway Administration, included as Appendix A [2] to this ER. Bridges such as outlet works or dam service bridges not open to the public are not included in this program but are to be included in the program or ER 1110-2-100.

(e) *Inspection procedure.* The bridges subject to this regulation shall be inspected in accordance with the Manual of Maintenance Inspection of Bridges, 1974, published by the American Association of State Highway and Transportation Officials (AASHTO).

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[1] This Regulation supersedes ER 1110-2-99, 6 August 1971.

[2] Appendix A is filed as a part of the original document. See 23 CFR Part 25 or 36 FR 7815, April 27, 1971.

(f) *Frequency and extent of inspections.* Each bridge subject to this regulation shall be inspected every 2 years unless the condition of the bridge is such that more frequent inspections are required. The depth to which each bridge is to be inspected will depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The initial inspection of each bridge shall be complete and comprehensive, and shall include a technical evaluation of all elements of the bridge.

(g) *Qualification of inspectors.* The inspection team will be headed by an individual with bridge design experience and all members shall be adequately versed in the principles of bridge inspection contained in the Bridge Inspection Training Manual published by the Department of Transportation.

(h) *Inspection report.* (Exempt under para. 7-2u, AR 335-15) (1) A formal technical report of the inspection and evaluation of each bridge shall be prepared for permanent record and to form a basis for major remedial work when required. The initial and supplementary bridge inspection reports shall be prepared in accordance with the provisions of paragraph (c)(3) of this section. The description of the bridge will be supplemented by sufficient drawings to illustrate the basic structure, adequately. The report will contain an evaluation of the condition of the bridge; proposed remedial measures, work schedule and estimated cost, when appropriate; and recommendations for depth and frequency of future inspections.

(2) The inspection report will be submitted for review and approval within 120 days of the inspection. These reports will be reviewed and approved by the Division Engineers except as follows:

(i) Those reports prepared in Division offices.

(ii) Those reports which indicate that the safety of the bridge structure is questionable.

(iii) Those reports which indicate the necessity for repairs or rehabilitation beyond the scope of normal maintenance.

(3) Those reports not approved by the Division Engineers will be transmitted promptly through the Division office to HQDA (DAEN-CWE-D), WASH DC 20314. The views and recommendations of the Division Engineer will be included in the transmittal correspondence.

(i) *Reporting distress.* When the inspection and evaluation of the bridge structure indicates evidence of distress or potential failure requiring immediate remedial action, DAEN-CWE-D will be immediately informed through the Division office in accordance with reference b.

(j) *Bridge inventory.* An inventory of all bridge structures subject to this regulation shall be prepared and maintained. This inventory will consist of a Bridge Inventory and Evaluation Sheet for each Bridge. These Inventory and Evaluation Sheets shall include the following information:

(1) Identification data.

(i) Structure number.

(ii) Location: Project, highway designation, County, State.

(2) Structure data.

(i) Date built.

(ii) Type of bridge.

(iii) Use: Average Daily Traffic (ADT), type of traffic.

(iv) Number traffic lanes, roadway width.

(v) Number of spans and span lengths, total length.

(vi) Design loading.

(vii) Load postings and speed postings (if posted).

(3) Inspection and appraisal data (original and supplementary reports).

(i) Date inspected.

(ii) Date report approved.

(iii) Condition of bridge.

(iv) Inventory rating.

(v) Operating rating.

(k) *Schedule of inspections.* A schedule of the inspections and status of reports will be maintained by the Division Engineers.

(l) *Responsibilities.* (1) The Engineering Division of the District office will formulate the plans for the inspection, conduct the inspection, analyze the results, evaluate the bridge, determine depth and frequency of future inspections, prepare the report

and prepare and maintain the Bridge Inventory and Evaluation Sheets.

(2) The Operations Division of the District office will assist and participate in the inspection.

(3) The Engineering Division of the Division office will review and monitor the inspection and evaluation activities. This element will be responsible for maintaining the schedule of inspections and status of reports; and establishing procedures for promptly informing HQDA (DAEN-CWE-D) WASH DC 20314 when the inspection and evaluation indicates that the safety of the bridge structure is questionable.

(m) *Funding.* Funding for the bridge inspection and evaluation program shall be under Appropriation 96-3123, Operation and Maintenance, General, through regular budgetary procedures for the projects involved. Funds for the inspection, evaluation and report preparation and submission will be programmed by the Districts for the structures scheduled for inspection in each fiscal year.

(Sec. 26, Federal-Aid Highway Act of 1968, 23 U.S.C. 116(d); delegation of authority in 49 CFR 1.48(b))

[42 FR 16138, Mar. 25, 1977]

§ 222.4 Acquisition of lands downstream from spillways for hydrologic safety purposes.

(a) *Purpose.* This regulation provides guidance on the acquisition of lands downstream from spillways for the purpose of protecting the public from hazards imposed by spillway discharges. Guidance contained herein is in addition to ER 405-2-150.

(b) *Applicability.* This regulation is applicable to all OCE elements and all field operating agencies having civil works responsibilities.

(c) *Reference.* ER 405-2-150.

(d) *Discussion.* A policy of public safety awareness will be adhered to in all phases of design and operation of dam and lake projects to assure adequate security for the general public in areas downstream from spillways. A real estate interest will be required in those areas downstream of a spillway where spillway discharge could create or significantly increase a hazardous condition. The real estate interest will extend downstream to where the spillway discharge would not significantly increase hazards. A real estate interest is not required in areas where flood conditions would clearly be nonhazardous.

(e) *Hydrologic criteria.* The construction and operation of a dam and spillway may create or aggravate a potential hazard in the spillway discharge area. Therefore, an appropriate solution should be developed in a systematic manner. All pertinent facts need to be considered to assure that the risk to non-Federal interests does not exceed conditions that would prevail without the project. General hydrologic engineering considerations are as follows:

(1) *Probability of spillway use.* Pool elevation versus probability of filling relationships can change materially after initial construction. Spillway use may be more frequent than anticipated. The infrequent use of a spillway is not a basis for the lack of adequate downstream real estate interest.

(2) *Changes in project functions.* Water resource needs within river basins change and pool levels may be adjusted to provide more conservation storage, particularly when high-level limited-service spillways are provided. Such changes normally increase spillway use and are to be considered.

(3) *Volume and velocity of spillway flow.* The amount of flow and destructive force of the flow from a spillway during floods up to the spillway design flood can vary from insignificant to extremely hazardous magnitudes. The severity and area of hazard associated with spillway discharge will vary depending on specific project site conditions. Therefore, the hazard is to be analyzed on a project-by-project basis.

(4) *Development within floodway.* If development within the floodway downstream from a spillway is not present at the time of project construction, the existence of the reservoir may encourage development. Adverse terrain conditions do not preclude development. Sparse present development is not a basis for lack of real estate acquisition.

(5) *Debris movement within floodway.* The availability of erodible material in a spillway flow area intensifies

the hazards of spillway flow. In fact, debris may be transported to downstream areas that otherwise would not be adversely affected. Extreme erosion may result from high velocities and turbulence. Both debris and erosion must be evaluated and considered.

(6) *Flood warning and response potential.* Small projects generally have short time periods available to warn downstream inhabitants and may be unattended prior to spillway use. The ability to convince individuals to leave most of their worldly possessions to the ravages of spillway flow may be severely limited. In some cases flood warning systems may be necessary; however, this subject is beyond the scope of this regulation. Warning systems are not an adequate substitute for a real estate interest in lands downstream of spillways.

(7) *Location of spillway.* Spillways should be located to minimize the hazards associated with their discharge and the total project cost (cost of spillway structure and downstream lands). Spillways, outlet works, stilling basins, and outlet channels should be designed to minimize hazards to downstream interest insofar as is engineeringly and economically reasonable.

(f) *Real estate.* The real estate interest required downstream of spillways will be adequate to assure carrying out project purposes and to protect non-Federal interest from hazards created by spillway flows. The interest may be either fee or permanent easement. A permanent easement must exclude all overnight and/or permanent habitation, structures subject to damage by spillway flows and activities that would increase the potential hazards. No real estate interest is required for:

(1) Areas where the imposed or aggravated flood condition is non-hazardous. Affected interest should be informed of the nature of the imposed non-hazardous flood condition.

(2) Areas where the construction and operation of a dam and spillway do not increase or create a hazardous condition.

(g) *Alternative land uses.* In some cases land downstream from spillways can be effectively used for purposes other than hydrologic safety. Therefore, the entire cost of these lands may not be an additional project cost. For example, the lands downstream of a spillway may be used for wildlife management essential to project purposes in lieu of other lands suitable for similar purposes at another location.

(h) *Procedural guidance.* Procedures regarding the application of the principles outlined in the above paragraphs are as follows:

(1) For various flood magnitudes up to the probable maximum flood determine the "with" and "without project" flood conditions downstream of a dam spillway for the following:

(i) Flooded area.

(ii) Flood depth.

(iii) Flood duration.

(iv) Velocities.

(v) Debris and erosion.

(2) Determine the combinations of flood magnitudes and the above flood conditions that could be the most hazardous and/or result in the greatest increase in hazard from "without" to "with project" flood conditions. Designate these combinations of flood magnitude and flood conditions as the critical conditions.

(3) For the critical conditions selected above outline the areas where the project could increase and/or create (impose) one or more of the critical conditions. Areas where spillway flows do not create or increase flood conditions are excluded from further analysis.

(4) Determine where the imposed critical conditions as outlined above would be hazardous and non-hazardous. Non-hazardous areas are defined as those areas where:

(i) Flood depths are maximum of 2 feet in urban and rural areas.

(ii) Flood depths are essentially nondamaging to urban property.

(iii) Flood durations are a maximum of 3 hours in urban areas and 24 hours in agricultural areas.

(iv) Velocities do not exceed 4 feet per second.

(v) Debris and erosion potentials are minimal.

(vi) Imposed flood conditions would be infrequent. That is, the exceedence frequency should be less than 1 percent. Hazardous areas are those where any of the above criteria are exceeded.

(5) Based upon the information developed above and the principles outlined in paragraphs (c) through (f) of this section, decide on the extent of area and estate required for hydrologic safety purposes.

(i) *Reporting.* Lands to be acquired downstream from spillways and intended purposes will be identified and the cost included in feasibility reports and real estate design memoranda. Additional specific information in support of land acquisition should be provided in Phase I or Phase II general design memoranda (GDM) and dam modernization reports. This information should include topographic maps, area flooded maps, velocities, erosion and debris areas "with" and "without" the project. Real estate boundaries and discussions of items in paragraph (h)(4) are also essential in the GDM's and dam modernization reports.

(Act of Congress approved March 1, 1917, (33 U.S.C. 701) and sec. 2 of the act of Congress approved June 28, 1938 as amended (33 U.S.C. 701c-1))

[43 FR 35481, Aug. 10, 1978]

§ 222.5 Clearances for power and communication lines over reservoirs.

(a) *Purpose.* This regulation prescribes the minimum vertical clearances to be provided when relocating existing or constructing new power and communication lines over waters of reservoir projects.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) ER 1180-1-1 (Section 73).

(2) National Electrical Safety Code (ANSI C2), available from IEEE Service Center, 445 Hoes Lane, Piscataway, N.J. 08854.

(d) *Definitions*—(1) *Design high water level.* The design high water level above which clearances are to be provided shall be either: (i) The elevation of the envelope profile of the 50 year flood, or flood series, routed through the reservoir with a full conservation pool after 50 years of sedimentation, or (ii) the elevation of the top of the flood control pool, whichever is higher.

(2) *Low point of line.* The low point of the line shall be the elevation of the lowest point of the line taking into consideration all factors including temperature, loading and length of spans as outlined in the National Electrical Safety Code.

(3) *Minimum vertical clearance.* The minimum vertical clearance shall be the distance from the design high water lever (paragraph (d)(1) of this section) to the low point of the line (paragraph (d)(2) of this section).

(e) *Required clearances.* Minimum vertical clearances for power and communication lines over reservoirs shall not be less than required by section 23, rule 232 of the latest revision of the National Electrical Safety Code (ANSI C2).

(1) In general, minimum vertical clearances shall not be less than shown in Table 232-1, Item 7, of ANSI C2, even for reservoirs or areas not suitable for sailboating or where sailboating is prohibited.

(2) If clearances not in accordance with Table 232-1 of ANSI C2 are proposed, justification for the clearances should be provided.

(f) *Navigable waters.* For parts of reservoirs that are designated as navigable waters of the United States, greater clearances will be provided if so required. The clearances required over navigable waters are covered by 33 CFR 322.5(i)(2) and are not affected by this regulation.

(Sec. 4 of the Flood Control Act of 1944, as amended (16 U.S.C. 460d))

[43 FR 14013, Apr. 4, 1978]

§ 222.6 Reporting earthquake effects.

(a) *Purpose.* This regulation states policy, defines objectives, assigns functions, and establishes procedures for assuring the structural integrity and operational adequacy of major Civil Works structures following the occurrence of significant earthquakes. It primarily concerns damage surveys following the occurrences of earthquakes.

(b) *Applicability.* This regulation is applicable to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) ER 1110-2-100 (§ 222.2).

(2) ER 1110-2-1806.

(3) ER 1110-2-8150.
(4) ER 1130-2-419.
(5) State-of-the-Art for Assessing Earthquake Hazards in the United States—WES Miscellaneous Papers S-73-1—Reports 1 thru 14. Available from U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180.

(d) *Policy.* Civil Works structures which could be caused to fail or partially fail by an earthquake and whose failure or partial failure would endanger the lives of the public and/or cause substantial property damage, will be evaluated following potentially damaging earthquakes to insure their continued structural stability, safety and operational adequacy. These structures include dams, navigation locks, powerhouses, and appurtenant structures, (intakes, outlet works, buildings, tunnels, paved spillways) which are operated by the Corps of Engineers and for which the Corps is fully responsible. Also included are major levees, floodwalls, and similar facilities designed and constructed by the Corps of Engineers and for whose structural safety and stability the Corps has a public obligation to be aware of although not responsible for their maintenance and operation. The evaluation of these structures will be based upon post-earthquake inspections which will be conducted to detect conditions of significant structural distress and to provide a basis for timely initiation of restorative and remedial measures.

(e) *Post-earthquake inspections and evaluation surveys*—(1) *Limitations of present knowledge.* The design of structures for earthquake loading is limited by the infrequent opportunity to compare actual performance with the design. Damage which would affect the function of the project is unlikely if peak accelerations are below 0.1g.; but it cannot be assumed that a structure will not be damaged from earthquake loadings below that for which it was designed. Furthermore, earthquakes have occurred in several parts of the country where significant seismic activity had not been predicted by some seismic zoning maps. This indicates the possibility that earthquake induced loads may not have been adequately considered in the design of older structures.

(2) *Types of reportable damage.* Many types of structural damage can be induced by ground motion from earthquakes or from large nuclear blasts (which also tend to induce ground vibrations in the more damaging lower frequency ranges). Any post-earthquake change in appearance or functional capability of a major Civil Works structure should be evaluated and reported. Examples are symptoms of induced stresses in buildings made evident by cracked plaster, windows or tile, or in binding of doors or windows; cracked or shifted bridge pier footings or other concrete structures; turbidity or changed static level of water wells; cracks in concrete dams or earth embankments; and misalignment of hydraulic control structures or gates. Induced dynamic loading on earth dams may result in loss of freeboard by settlement, or cause localized quick conditions within the embankment sections or earth foundations. Also, new seepage paths may be opened up within the foundation or through the embankment section. Ground motion induced landslides may occur in susceptible areas of the reservoir rim, causing embankment overtopping by waves and serious damage. All such unusual conditions should be evaluated and reported.

(f) *Inspection and evaluation programs.* (1) If the project is located in an area where the earthquake causes significant damage (Modified Mercalli Intensity VII or greater) to structures in the vicinity, the Chief, Engineering Division, should be immediately notified and an engineering evaluation and inspection team should be sent to the project.

(2) If the project is located in an area where the earthquake is felt but causes no or insignificant damage (Modified Mercalli Intensity VI or less) to structures in the vicinity of the project, project operations personnel should make an immediate inspection. This inspection should determine: (i) Whether there is evidence of earthquake damage or disturbance, and (ii) whether seismic instrumentation, where present, has been triggered. The Chief, Engineering Division

should be notified by phone of the results of the inspection. If damage is observed, which is considered to threaten the immediate safety or operational capability of the project, immediate action should be taken as covered in paragraph (f)(1) of this section. For other situations, the Chief of Engineering Division will determine the need for and urgency for an engineering inspection.

(3) When an engineering inspection of structures is deemed necessary following a significant earthquake, HQDA (DAEN-CWE) WASH DC 20314 will be notified of the inspection program as soon as it is established.

(4) As a general rule, the structures which would be of concern following an earthquake are also the structures which are involved in the inspection program under ER 1110-2-100. Whenever feasible, instrumentation and prototype testing programs undertaken under ER 1110-2-100 to monitor structural performance and under ER 1110-2-8150 to develop design criteria will be utilized in the post-earthquake safety evaluation programs. Additional special types of instrumentation will be incorporated in selected structures in which it may be desirable to measure forces, pressures, loads, stresses, strains, displacements, deflections, or other conditions relating to damage and structural safety and stability in case of an earthquake.

(5) Where determined necessary, a detailed, systematic engineering inspection will be made of the post-earthquake condition of each structure, taking into account its distinctive features. For structures which have incurred earthquake damage a formal technical report will be prepared in a format similar to inspection reports required under ER 1110-2-100. (Exempt from requirements control under paragraph 7-2b, AR 335-15.) The report will include summaries of the instrumentation and other observation data for each inspection, for permanent record and reference purposes. This report will be used to form a basis for major remedial work when required. Where accelerometers or other types of strong motion instruments have been installed, readings and interpretations from these instruments should also be included in the report. The report will contain recommendations for remedial work when appropriate, and will be transmitted through the Division Engineer for review and to HQDA (DAEN-CWE) WASH DC 20314 for review and approval. For structures incurring no damage a simple statement to this effect will be all that is required in the report, unless seismic instrumentation at the project is activated. (See paragraph (h)(4) of this section.)

(g) *Training.* The dam safety training program covered by paragraph 6 of ER 1130-2-419 should include post-earthquake inspections and the types of damage operations personnel should look for.

(h) *Responsibilities.* (1) The Engineering Divisions of the District offices will formulate the inspection program, conduct the post-earthquake inspections, process and analyze the data of instrumental and other observations, evaluate the resulting condition of the structures, and prepare the inspection reports. The Engineering division is also responsible for planning special instrumentation felt necessary in selected structures under this program. Engineering Division is responsible for providing the training discussed in paragraph (g) of this section.

(2) The Construction Divisions of the District offices will be responsible for the installation of the earthquake instrumentation devices and for data collection if an earthquake occurs during the construction period.

(3) The Operations Division of the District offices will be responsible for the immediate assessment of earthquake damage and notifying the Chief, Engineering Division as discussed in paragraphs (f)(1) and (2). The Operations Division will also be responsible for earthquake data collection after the construction period in accordance with the instrumental observation programs, and will assist and participate in the post-earthquake inspections.

(4) The U.S. Geological Survey has the responsibility for servicing and collecting all data from strong motion instrumentation at Corps of Engineers dam projects following an earthquake

occurrence. However, the U.S. Army Waterways Experiment Station (WES) is assigned the responsibility for analyzing and interpreting these earthquake data. Whenever a recordable earthquake record is obtained from seismic instrumentation at a Corps project, the Division will send a report of all pertinent instrumentation data to the Waterways Experiment Station, ATTN: WESGH, P.O. Box 631, Vicksburg, Mississippi 39180. The report on each project should include a complete description of the locations and types of instruments and a copy of the instrumental records from each of the strong motion machines activated. (Exempt from requirements control under paragraph 7-2v, AR 335-15).

(5) The Engineering Divisions of the Division offices will select structures for special instrumentation for earthquake effects, and will review and monitor the data collection, processing, evaluating, and inspecting activities. They will also be specifically responsible for promptly informing HQDA (DAEN-CWE) WASH DC 20314, when evaluation of the condition of the structure or analyses of the instrumentation data indicate the stability of a structure is questionable. (Exempt for requirements control under paragraph 7-2o, AR 335-15.)

(6) Division Engineers are responsible for issuing any supplementary regulations necessary to adapt the policies and instructions herein to the specific conditions within their Division.

(i) *Funding.* Funding for the evaluation and inspection program will be under the Appropriation 96X3123, Operations and Maintenance, General. Funds required for the inspections, including Travel and Per Diem costs incurred by personnel of the Division office or the Office, Chief of Engineers, will be from allocations made to the various projects for the fiscal year in which the inspection occurs.

(Pub. L. 738, 74th Congress, 49 Stat. 1570 (33 U.S.C. 701b); Pub. L. 685, 75th Congress, 52 Stat. 802 (33 U.S.C. 540); Pub. L. 92-367, 86 Stat. 506 (33 U.S.C. 467 et seq.))

[44 FR 43469, July 25, 1979]

§ 222.8 National Program for Inspection of Non-Federal Dams.

(a) *Purpose.* This regulation states objectives, assigns responsibilities and prescribes procedures for implementation of a National Program for Inspection of Non-Federal Dams.

(b) *Applicability.* This regulation is applicable to all Divisions and Districts having Civil Works functions.

(c) *References.* (1) The National Dam Inspection Act, Pub. L. 92-367, 8 August 1972.

(2) Freedom of Information Act, Pub. L. 87-487, 4 July 1967.

(3) ER 500-1-1.

(d) *Authority.* The National Dam Inspection Act, Public Law 92-367, 8 August 1972 authorizes the Secretary of the Army, acting through the Chief of Engineers, to carry out a national program of inspection of non-Federal dams for the purpose of protecting human life and property.

(e) *Scope.* The program provides for:

(1) An update of the National Inventory of Dams.

(2) Inspection of the following non-Federal dams (the indicated hazard potential categories are based upon the location of the dams relative to developed areas):

(i) Dams which are in the high hazard potential category (located on Federal and non-Federal lands).

(ii) Dams in the significant hazard potential category believed by the State to represent an immediate danger to the public safety due to the actual condition of the dam.

(iii) Dams in the significant hazard potential category located on Federal lands.

(iv) Specifically excluded from the national inspection program are: (A) Dams under the jurisdiction of the Bureau of Reclamation, the Tennessee Valley Authority, the International Boundary and Water Commission and the Corps of Engineers and (B) dams which have been constructed pursuant to licenses issued under the authority of the Federal Power Act, and (C) dams which have been inspected within the 12-month period immediately prior to the enactment of this act by a State agency and which the

Governor of such State requests be excluded from inspection.

(f) *Objectives.* The objectives of the program are:

(1) To update the National Inventory of Dams by 30 September 1980.

(2) To perform the initial technical inspection and evaluation of the non-Federal dams described in paragraph 222.8(e) of this section to identify conditions which constitute a danger to human life or property as a means of expediting the correction of hazardous conditions by non-Federal interests. The inspection and evaluation is to be completed by 30 September 1981.

(3) To obtain additional information and experience that may be useful in determining if further Federal actions are necessary to assure national dam safety.

(4) Encourage the States to establish effective dam safety programs for non-Federal dams by 30 September 1981 and assist the States in the development of the technical capability to carry out such a program.

(g) *Program Execution*—(1) *Responsibilities.* (i) The owner has the basic legal responsibility for potential hazards created by their dam(s). Phase II studies, as described in Chapter 4, Appendix D, and remedial actions are the owner's responsibility.

(ii) The State has the basic responsibility for the protection of the life and property of its citizens. Once a dam has been determined to be unsafe, it is the State's responsibility to see that timely remedial actions are taken.

(iii) The Corps of Engineers has the responsibility for executing the national program. The Federal program for inspection of dams does not modify the basic responsibilities of the States or dam owners. The Engineering Division of the Civil Works Directorate is responsible for overall program goals, guidance, technical criteria for inspections and inventory and headquarters level coordination with other agencies. The Water Resources Support Center (WRSC) located at Kingman Building, Fort Belvoir, Virginia 22060 is responsible for:

(A) Program Coordination of both the inventory and inspection programs.

(B) Developing and defining functional tasks to achieve program objectives.

(C) Determining resource requirements. (Budget)

(D) Compiling and disseminating progress reports.

(E) Monitoring and evaluating program progress and recommending corrective measures as needed.

(F) Collecting and evaluating data pertaining to inspection reports, dam owners' responses to inspection report recommendations, attitudes and capabilities of State officials, State dam safety legislation, Architect-Engineer performance, etc., for defining a comprehensive national dam safety program.

(G) Responding to Congressional, media, scientific and engineering organization and general public inquiries.

Division and District offices are responsible for executing the program at the State level. Assignment of Division reponsibilities for States is shown in Appendix A.

(2) *State participation.* Where State capability exists, every effort should be made to encourage the State to execute the inspection program either with State personnel or with Architect-Engineer (A-E) contracts under State supervision. If the State does not have the capability to carry out the inspection program, the program will be managed by the Corps of Engineers utilizing Corps employees or contracts with A-E firm.

(h) *Update of National Inventory of Dams.* (RCS-DAEN-CWE-17/OMB No. 49-RO421)

(1) The National Inventory of Dams should be updated and verified to include all Federal and non-Federal dams covered by the Act. Those dams are defined as all artificial barriers together with appurtenant works which impound or divert water and which: (1) Are twenty-five feet or more in height or (2) have an impounding capacity of fifty acre-feet or more. Barriers which are six feet or less in height, regardless of storage capacity or barriers which have a storage capacity at maximum water storage elevation of fifteen acre-feet or less regardless of height are not included.

(2) Inventory data for all dams shall be provided in accordance with Appendix B.

(3) The hazard potential classification shall be in accordance with paragraph 2.1.2 *Hazard Potential* of the Recommended Guideline for Safety Inspection of Dams (Appendix D to this section).

TABLE 2—HAZARD POTENTIAL CLASSIFICATION

Category	Urban development	Economic loss
Low	No permanent structure for human habitation	Minimal (Undeveloped to occasional structures or agriculture).
Significant	No urban development and no more than a small number of habitable structures.	Appreciable (Notable agriculture, industry or structures).
High	Urban development with more than a small number of habitable structures.	Excessive (Extensive community, industry or agriculture).

(4) As in the original development of the inventory, the States should be encouraged to participate in the work of completing, verifying and updating the inventory. Also, when available, personnel of other appropriate Federal agencies should be utilized for the inventory work on a reimbursable basis. Work in any State may be accomplished:

(i) Under State supervision utilizing State personnel or Architect-Engineers contracts.

(ii) Under Corps supervision utilizing Corps employees, employees of other Federal agencies or Architect-Engineer contracts.

(5) A minimum staff should be assigned in Districts and Divisions to administer and monitor the inventory activities. Generally, the work should be accomplished by architect-engineers or other Federal agency personnel under State or Corps supervision. Corps personnel should participate in the inventory only to the extent needed to assure that accurate data are collected.

(6) The National Inventory of Dams computerized data base in stored on the Boeing Computer Services (BCS) EKS computer system in Seattle, Washington. The data base uses Data Base Management System 2000 and is accessible for query by all Corps offices.

(7) Appendix B indicates details on accessing and updating inventory data.

(8) Appendix I describes the procedure for using NASA Land Satellite (LANDSAT) Multispectral Scanner data along with NASA's Surface Water Detection and Mapping (DAM) computer program to assist in updating and verifying and National Inventory of Dams.

(9) All inventory data for dams will be completed and verified utilizing all available sources of information (including LANDSAT overlay maps) and will include site visitation if required. It is the responsibility of the District Engineer to insure that the inventory of each State within his area of responsibility is accurate and contains the information required by the General Instructions for completing the forms for each Federal and non-Federal dam.

(i) [Reserved]

(j) *Inspection Program.* (RCS-DAEN-CWE-17 and OMB No. 49-RO421)

(1) *Scheduling of inspections.* The Governor of each State or his designee will continue to be involved in the selection and scheduling of the dams to be inspected. Priority will be given to inspection of those dams considered to offer the greatest potential threat to public safety.

(i) No inspection of a dam should be initiated until the hazard potential classification of the dam has been verified to the satisfaction of the Corps. Dams in the significant hazard category should be inspected only if requested by the State and only then if the State can provide information to show that the dam has deficiencies that pose an immediate danger to the public safety. Guidance for the selection of significant category non-Feder-

al dams on Federal lands will be given in the near future.

(ii) Selection for inspection of non-Federal dams located on Federal lands or non-Federal dams designed and constructed under the jurisdiction of some Federal agency, should be coordinated with the responsible Federal agency. The appropriate State or regional representative of the Federal agency also should be contacted to obtain all available data on the dam. Representatives of the agency may participate in the inspection if they desire and should be given the opportunity to review and comment on the findings and recommendations in the inspection report prior to submission to the Governor and the dam owner. Examples of such dams are: non-Federal dams built on lands managed by National Forest Service, Bureau of Land Management, Fish and Wildlife Service, etc.; non-Federal dams designed and constructed by the Soil Conservation Service of the U.S. Department of Agriculture; high hazard mine tailings and coal mine waste dams under the jurisdiction of the Mine Safety and Health Administration, Department of Labor.

(iii) Indian-owned dams on trust lands are considered to be non-Federal dams. All dams in the high hazard potential category will be inspected. Privately-owned dams located on Indian lands are to be included in the program, however BIA-owned dams on Indian lands are Federal dams and are exempt.

(2) *Procedures.* The Division Engineer is responsible for the quality of inspections and reports prepared by the District Engineer. Close liaison between the District Engineer and the State agency or A-E firm responsible for the inspections will be required in order to obtain a dependable result. To avoid undesirable delays in the evaluation of safety of individual dams, contracts with A-E's or agreements with States which are managing the program will provide that reports be completed and furnished to the District Engineer within a specified time after completion of the on-site inspection of the dam.

(i) *Inspection guidelines.* The inspection should be conducted in accordance with the Recommended Guidelines for Safety Inspection of Dams (Appendix D to this section). Expanded Guidance for Hydrologic and Hydraulic Assessment of Dams is provided in Appendix C. The criteria in the recommended guidelines are screening criteria to be used only for initial determinations of the adequacy of the dam. Conditions found during the investigation which do not meet the guideline recommendations should be assessed as to their importance from the standpoint of the degree of risk involved.

(ii) *Coordinators.* Experience has shown that coordination and communications among technical disciplines, Public Affairs Office, emergency officials, training officers, operations personnel, State representatives and A-E firms has been best in those districts where one person was delegated the responsiblity for coordinating the actions of all involved elements. Each district should evaluate its overall coordination procedures to insure that all involved elements have the best possible access to necessary data.

(iii) Field investigations should be carried out in a systematic manner. A detailed checklist or inspection form should be developed and used for each dam inspection and appended to the inspection report. The size of the field inspection team should be as small as practicable, generally consisting of only one representative of each required discipline in order to control the costs of the inspection without sacrificing the quality of the inspection. The inspection team for the smaller less complex dams should be limited to two or three representatives from appropriate technical areas with additional specialists used only as special conditions warrant. The larger more complex projects may require inspection teams of three or four specialists. Performance of overly detailed and precise surveys and mapping should be avoided. Necessary measurement of spillway, dam slopes, etc. can generally be made with measuring tapes and hand levels.

(iv) *Additional engineering studies.* Dam inspections should be limited to Phase I investigations as outlined in Chapter 3 of Appendix D. However, if

recommended by the investigating engineer and approved by the District Engineer, some additional inexpensive investigations may be performed when a reasonable judgment on the safety of the dam cannot be made without additional investigation. Any further Phase II investigation needed to prove or disprove the findings of the District Engineer or to devise remedial measures to correct deficiencies are the responsibility of the owner and will not be undertaken by the Corps of Engineers.

(v) *Assessment of the investigation.* (A) The findings of the visual inspection and review of existing engineering data for a dam shall be assessed to determine its general condition. Dams assessed to be in generally good condition should be so described in the inspection report. Deficiencies found in a dam should be described and assessed as to the degree of risk they present. The degree of risk should consider only loss of life and/or property damage resulting from flooding due to dam failure. Loss of project benefits i.e., municipal water supply, etc., should not be considered. If deficiencies are assessed to be of such a nature that, if not corrected, they could result in the failure of the dam with subsequent loss of life and/or substantial property damage, the dam should be assessed as "Unsafe." If the probable failure of an "Unsafe" dam is judged to be imminent and immediate action is required to reduce or eliminate the hazard, the "unsafe" condition of the dam should be considered an "emergency." If the probable failure is judged not to be imminent, the "unsafe" condition should be considered a "non-emergency."

(B) Adequacy of spillway. The "Recommended Guidelines for Safety Inspection of Dams," Appendix D, provide current, acceptable inspection standards for spillway capacity. Any spillway capacity that does not meet the criteria in the "Guidelines" is considered inadequate. When a spillway's capacity is so deficient that it is seriously inadequate, the project must be considered *unsafe.* If all of the following conditions prevail, the Governor of the State shall be informed that such project is unsafe:

(*1*) There is high hazard to loss of life from large flows downstream of the dam.

(*2*) Dam failure resulting from overtopping would significantly increase the hazard to loss of life downstream from the dam over that which would exist just before overtopping failure.

(*3*) The spillway is not capable of passing one-half of the probable maximum flood without overtopping the dam and causing failure.

Classification of dams with seriously inadequate spillways as "unsafe, non-emergency" is generally a proper designation of the urgency of the unsafe condition. However, there may be cases where the spillway capacity is unusually small and the consequences of dam overtopping and failure would be catastrophic. In such cases, the unsafe dam should be classified as an emergency situation.

(vi) All inspection reports will receive one level of independent review by the Corps. If the reports are prepared by the Corps, the independent review may be performed internally within the district office. However, in cases which involve significant economic, social or political impacts and technical uncertainties in evaluating the dams, advice may be obtained from the staffs of the Division Engineer and the Office, Chief of Engineers.

(3) *Reports*—(i) *Preparation.* A written report on the condition of each dam should be prepared as soon as possible after the completion of the field inspection and assessment. A suggested report format is attached as Appendix E. It is important that the inspection report be completed in a timely manner. For inspections being done by Corps employees, it is suggested that once an inspection team has been assigned to a dam inspection it be allowed to complete the inspection and report without interruption by other work.

(ii) *Review and approval.* The coordinating engineer should determine which disciplines should review the report and establish a procedure to accomplish the review in a timely manner. A review panel, made up of the appropriate Division and Branch

Chiefs has worked well in some districts. Use of a review panel should be seriously considered by all districts. All inspection reports shall be approved by the District Engineer who will maintain a complete file of final approved reports. Any State or Federal agency having jurisdiction over the dam or the land on which the dam is built should be given the opportunity to review and comment on the report prior to submission to the Governor or dam owner. The District Engineer will transmit final approved reports to the Governor of the State and the dam owner (or the Governor only, when requested in writing by State officials). If the report is initially furnished to the Governor only, a period of up to ten days may be allowed before the report is furnished to the dam owner. If the Governor or the owner indicates additional technical information is available that might affect the assessment of the dam's condition, the District Engineer will furnish the proposed final report to the Governor and the owner and establish a definite time period for comments to be furnished to the District Engineer prior to report approval.

(iii) In general the Governor will be responsible for public release of an inspection report and for initiating any public Statements. However, an approved report must be treated as any other document subject to release upon request under the Freedom of Information Act. The letters of transmittal to the Governor and owner should indicate that under the provisions of the Freedom of Information Act, the documents will be subject to release upon request after receipt by the Governor. Proposed final reports will be considered as internal working papers not subject to release under the Freedom of Information Act. Corps personnel, A-E contractor personnel and others working under supervision of the Corps will be cautioned to avoid public statements about the condition of the dam until after the District Engineer has approved the report. The Corps will respond fully to inquiries after the Governor has received the approved report or been notified of an unsafe dam. An information copy of the report should be sent to the District office normally having jurisdiction if other than the District responsible for the inspection.

(iv) *Follow-up action.* A Federal investment of the magnitude anticipated for this inspection program makes it desirable that a reporting system be established to keep the District Engineer abreast of the implementation of the recommendations in the inspection reports. The letters of transmittal to the Governor and owner will request that the District Engineer be informed of the actions taken on the recommendations in the inspection reports. However, the National Dam Inspection Act only authorizes the initial inspection of certain dams; therefore, once a report is completed no reinspection will be undertaken.

(4) *Unsafe dams.* The investigating engineer will be required to immediately notify the District Engineer when a dam is assessed as being unsafe. He will also indicate if probable failure of the unsafe dam is judged to be imminent and immediate action is required to reduce or eliminate the threat. The District Engineer will evaluate the findings of the investigating team and will immediately notify the Governor and the owner if the findings are Unsafe Non-Emergency or Unsafe-Emergency. The appropriate State agency and the Corps of Engineers officials having emergency operation responsibility for the area in which the dam is located will also be notified. The information provided in the unsafe dam notice shall be as indicated in Appendix F. Any emergency procedures or remedial actions deemed necessary by the District Engineer will be recommended to the Governor who has the responsibility for any corrective actions. As provided in ER 500-1-1, Corps assistance under Pub. L. 84-99 "Advance Measures," may be made available to complement the owner's and Governor's action under certain conditions and subject to the approval of the Director of Civil Works. The District Engineer's Emergency Operation Officer will coordinate the advance measures request in accordance with existing procedures. Coordination will be maintained between the District responsible for emergency action

under Pub. L. 84-90 and the District responsible for the inspection.

(5) *Emergency action plans.* An emergency action plan should be available for every dam in the high and significant hazard category. Such plans should outline actions to be taken by the operator to minimize downstream effects of an emergency and should include an effective warning system. If an emergency action plan has not been developed, the inspection report should recommend that the owner develop such an action plan. However, the Corps has no authority to require an emergency action plan.

(k) *Progress reports.* Progress reports should be submitted monthly by the Division Engineer to WRSC. The reports shall include progress through the last Saturday of the month and should be mailed by the following Monday. The reports shall contain the information and be typewritten in the format shown in Appendix G. Copies of Unsafe Dam Data Sheets will be submitted with the progress report. Copies of the completed inspection report for Dams in the Unsafe-Emergency category will be submitted also. (RCS-DAEN-CWE-19)

(l) *Contracts*—(1) *Corps of Engineers supervision.* Contracts for performing inventory and inspection activities under supervision of the Corps of Engineers shall be Fixed-Price Architect Engineer Contracts for Services. A sample scope of work setting forth requirements is provided in Appendix H. Experience has shown that costs for individual dam inspection have been lower when multiple inspections are included in one contract. Therefore, each A-E contract should include multiple dam inspections where practicable. Corps participation in A-E inspections should be held to a minimum. Corps representatives should participate in only enough A-E inspections to assure the equality of the inspections.

(2) *State supervision.* Contracts with States for performing inventory and inspection activities under State supervision may be either a Cost-Reimbursement type A-E Contract for Services or a Fixed-Price type contract. The selection of Architect-Engineers by the State should require approval of the Corps of Engineers Contracting Officer. The negotiated price for A-E services under cost-reimbursement type contracts with States will also require approval by the Contracting Officer. Contracts with States should require *timely* submission of the inspection reports to the District Engineer for review and approval. The contract provisions should also prevent public release of or public comment on the inspection report until the District Engineer has reviewed and approved the report. Corps of Engineers participation in State inspections should be limited to occasional selected inspections to assure the quality of the State program.

(m) *Training.* As indicated in paragraph 222.8(f) of this section, one objective of the inspection program for non-Federal Dams is to prepare the States to provide effective dam safety programs. In many States this will require training of personnel of State agencies in the technical aspects of dam inspections. The Office, Chief of Engineers is studying the need for and content of a comprehensive Corps-sponsored training program in dam inspection technology. Pending the possible adoption of such a comprehensive plan, division and district Engineers are encouraged to take advantage of suitable opportunities to provide needed training in dam safety activities to qualified employees of State agencies and, when appropriate, to employees of architect-engineer firms engaged in the program. The following general considerations should be observed in providing such training:

(1) Priority must be placed on inspection of dams and updating the national dam inventory; hence, diversion of resources to training activities should not deter or delay these principle program functions.

(2) Salaries, per diem and travel expenses relating to training activities of State employees will be a State expense.There will be no tuition charge for State employees.

(3) Architect-Engineer firms will be required to pay expenses and tuition costs for their employees participating in Corps-sponsored training activities.

(4) Corps-sponsored training will require that each trainee is a qualified

engineer or geologist and will concentrate on engineering technology related directly to dam safety. (This may require screening of proposed candidates for training.)

(5) Under this program, the Corps will not sponsor training that is intended primarily to satisfy requirements for a degree.

(6) Training by participation in actual dam inspections and/or management of the inspection program should be encouraged.

(Pub. L. 92-367)

Appendix A—Division Assignments

To facilitate better coordination with the States, the Division Engineers are responsible for the dam inspection program by States as follows:

New England Division: Maine, Rhode Island, Connecticut, Vermont, New Hampshire, Massachusetts

North Atlantic Division: New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia

Ohio River Division: West Virginia, Ohio, Kentucky, Tennessee, Indiana

South Atlantic Division: North Carolina, South Carolina, Georgia, Florida, Alabama, Puerto Rico, Virgin Islands

Lower Mississippi Valley Division: Mississippi, Louisiana, Missouri

North Central Division: Michigan, Wisconsin, Illinois, Minnesota, Iowa

Southwestern Division: Arkansas, Oklahoma, Texas, New Mexico

Missouri River Division: Kansas, Nebraska, South Dakota, North Dakota, Wyoming, Colorado

North Pacific Division: Oregon, Idaho, Montana, Washington, Alaska

South Pacific Division: Utah, California, Arizona, Nevada

Pacific Ocean Division: Hawaii, Trust Territories, American Samoa

App. B

Appendix B—Inventory of Dams

(RCS-DAEN-CWE-17 and OMB No. 49-RO421)

1. The updating of the inventory will include the completion of all items of data for all dams now included in the inventory, verification of the data now included in the inventory, and inclusion of complete data for all appropriate existing dams not previously listed. Data completion, verification and updating will be scheduled over a three year period.

2. The inventory data will be recorded on Engineering Form 4474 and 4474A (Exhibit 2). The general instructions for completing the forms are printed on the back of the forms. Parts I and II of the forms are to be fully completed. The instruction for completing Item 29, Line 5, Para. II (Engr Form 4474A) is revised to conform identically with the hazard potential classification contained in the recommended guidelines for safety inspection of dams. Additional data has been added to designate Corps districts in which the dam is located, Federal agency owned dams, Corps owned dams, Federal agency regulated dams, dams constructed with technical or financial assistance of the U.S. Soil Conservation Service, and privately owned dams located on Federal property.

3. All inventory data will be verified utilizing all available sources of information and will include site visitation if required.

4. The Inventory Data Base is stored on the Boeing Computer Services (BCS) EKS System in Seattle, Washington. The data is available to all Corps offices for queries using Data Base Management System 2000 (S2K).

a. To access the National Data Base log on BCS and type the following:

GET,DAMS/UN=CECELB

CALL,DAMS

b. For current information and changes to the National Inventory Data Base, type:

OLD,HOTDAM/UN=CEC1AT

LIST

5. The inventory update data will be furnished and the National Data Base will be updated on a monthly basis. The monthly submission will cover all dams whose inventory data were completed since the last report. The update data will be loaded directly onto the Boeing Computer by the field office.

a. The procedure for loading the data on the Boeing Computer can be printed by accessing the Boeing Computer and listing the information file "HOTDAM." (See paragraph 4b. above.)

b. It is the responsibility of the submitting office to edit the data prior to furnishing it for the update. Editing will be accomplished by processing the data using the Inventory Edit Computer program developed by the Kansas City District. This procedure is described in the "HOTDAM" file.

6. Federal agencies will be uniformly designated by major and minor abbreviations according to the following list whenever applicable to Items 46 through 53. Abbreviations are to be left justified within the field with one blank separating major and minor abbreviations.

90-115 O—82——27

	Major	Minor
a. International Boundary and Water Commission.	IBWC	
b. U.S. Department of Agriculture:		
(1) Soil Conservation Service.	USDA	SCS
(2) Forest Service	USDA	FS
c. U.S. Department of Energy Federal Energy Regulatory Commission.	DOE	FERC
d. Tennessee Valley Authority.	TVA	
e. U.S. Department of Interior:		
(1) Bureau of Sport Fisheries and Wildlife.	DOI	BSFW
(2) Geological Survey	DOI	GS
(3) Bureau of Land Management.	DOI	BLM
(4) Bureau of Reclamation	DOI	USBR
(5) Bureau of Indian Affairs.	DOI	BIA
f. U.S. Department of Labor:	DOL	MSHA
(1) Mine Safety and Health Administration.		
g. Corps of Engineers:		
(1) Lower Mississippi Valley Division:		
(a) Memphis District	DAEN	LMM
(b) New Orleans District	DAEN	LMN
(c) St. Louis District	DAEN	LMS
(d) Vicksburg District	DAEN	LMK
(2) Missouri River Division:		
(a) Kansas City District	DAEN	MRK
(b) Omaha District	DAEN	MRO
(3) New England Division.	DAEN	NED
(4) North Atlantic Division:		
(a) Baltimore District	DAEN	NAB
(b) New York District	DAEN	NAN
(c) Norfolk District	DAEN	NAO
(d) Philadelphia District	DAEN	NAP
(5) North Central Division:		
(a) Buffalo District	DAEN	NCB
(b) Chicago District	DAEN	NCC
(c) Detroit District	DAEN	NCE
(d) Rock Island District	DAEN	NCR
(e) St. Paul District	DAEN	NCS
(6) North Pacific Division:		
(a) Alaska District	DAEN	NPA
(b) Portland District	DAEN	NPP
(c) Seattle District	DAEN	NPS
(d) Walla Walla District	DAEN	NPW
(7) Ohio River Division:		
(a) Huntington District	DAEN	ORH
(b) Louisville District	DAEN	ORL
(c) Nashville District	DAEN	ORN
(d) Pittsburgh District	DAEN	ORP
(8) Pacific Ocean Division	DAEN	POD
(9) South Atlantic Division:		
(a) Charleston District	DAEN	SAC
(b) Jacksonville District	DAEN	SAJ
(c) Mobile District	DAEN	SAM
(d) Savannah District	DAEN	SAS
(e) Wilmington District	DAEN	SAW
(10) South Pacific Division:		
(a) Los Angeles District	DAEN	SPL
(b) Sacramento District	DAEN	SPK
(c) San Francisco District	DAEN	SPN
(11) Southwestern Division:		
(a) Albuquerque District	DAEN	SWA
(b) Fort Worth District	DAEN	SWF
(c) Galveston District	DAEN	SWG
(d) Little Rock District	DAEN	SWL
(e) Tulsa District	DAEN	SWT

7. *Procedures for Revising and Updating the Inventory of Dams Master File.*

a. *To Change Correct or Add an Item.* Submit a change card that contains the identification assigned to the dams (Columns 1 thru 7), the proper card code (Column 80) and only the item or items changed, corrected or added. Data on the master file is added or replaced on an item for item basis.

b. *To Delete an Item.* Submit a change card that contains the identification assigned to the dam, (Columns 1 thru 7), the proper card code (Column 80), and an asterisk (*) in the left most column of the item or items to be deleted. More than one item can be changed, corrected, added on or deleted from the same card.

c. *To Delete the Entire Data for a Dam from the Master File.* Submit a zero (0) card punched as follows:

Columns 1 thru 7—Item 1 identification assigned to the dam
Columns 8 thru 10—Item 2, Division Code
Columns 11 thru 16—The word DELETE
Columns 17 thru 79—Blank Spaces
Column 80—A zero

8. *Keypunch Instructions and Punched Card Formats.*

a. Table 1 describes the character set to be used for keypunch cards of Engr. Forms 4474 and 4474A.

b. Exhibit 1 is the EDPC keypunch instructions and punch card formats defining the data fields (Items) and card columns to be used in preparing punched cards in compliance with the requirements of this regulation.

c. Exhibit 2 are prints of Engr. Forms 4474 and 4474A which are laid out in punch card format to facilitate punching cards directly from the completed forms.

Table 1

STANDARD CHARACTER SET AND CARD CODES

A	12-1		0		0
B	12-2		1		1
C	12-3		2		2
D	12-4		3		3
E	12-5		4		4
F	12-6		5		5
G	12-7		6		6
H	12-8		7		7
I	12-9		8		8
J	11-1		9		9
K	11-2	space	blank		
L	11-3		,		0-3-8
M	11-4		.		12-3-8
N	11-5		-		11
O	11-6		*		11-4-8
P	11-7		/		0-1
Q	11-8		$		11-3-8
R	11-9				
S	0-2				
T	0-3				
U	0-4				
V	0-5				
W	0-6				
X	0-7				
Y	0-8				
Z	0-9				

NON-STANDARD CHARACTER SET

(	12-5-8	0-8-4
)	11-5-8	12-8-4
"	8-4	
'	11-8-5	
¸	12	
%	8-6	
;	12-8-7	11-8-6
:	8-2	
#	0-8-6	
@	8-5	
=	8-3	8-6

EDPC KEYPUNCH INSTRUCTIONS (Continued) ER 1110-2-106 26 Sept 79

JOB TITLE: INVENTORY OF UNITED STATES DAMS — JOB NO.:

CARD IDENTIFICATION: CARDS 0&1 — SOURCE: ENG FORM 4474

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
1	Card Number 0 Identity (State)	1	2	2	A	L	
1	Identit (Number)	3	7	5	N	R	
2	Div	8	10	3	A	L	
3	State	11	12	2	A	L	
4	County	13	15	3	N	R	
5	Congr Dist	16	17	2	N	R	
6	State	18	19	2	A	L	
7	County	20	22	3	N	R	
8	Congr. Dist	23	24	2	N	R	
9	Name	25	61	39	A	L	
10	Latitude	62	66	5	N	R	No decimal point is punched.
11	Longitude	67	72	6	N	R	No decimal point is punched.
12	Report Data (Day)	73	74	2	N	R	
12	Report Data (Mo)	75	77	3	A	L	
12	Report Data (Yr)	78	79	2	N	R	
	Card Number	80	80	1	N		Punch a 0
1	CARD NUMBER 1 Identity	1	7				Repeat Item 1 card 0
13	Popular Name	8	43	36	A	L	
14	Name of Impoundment	44	79	36	A	L	
	Card Number	80	80	1	N		Punch a 1

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 88 0-1817B

SHEET OF SHEETS

Exhibit 1

ER 1110-2-106
26 Sept 79

EDPC KEYPUNCH INSTRUCTIONS (Continued)

JOB TITLE: INVENTORY OF UNITED STATES DAMS — JOB NO.:

CARD IDENTIFICATION: CARD 2 — SOURCE: ENG FORM 4474

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
1	CARD NUMBER 2 Identity	1	7				Repeat Item 1 card 0
15	Region	8	9	2	N	R	
16	Basin	10	11	2	N	R	
17	River or Stream	12	40	29	A	L	
18	City-Town-Village	41	68	28	A	L	
19	Distance from Dam	69	71	3	N	R	
20	Population	72	79	8	N	R	
	Card Number	80	80	1	N		Punch a 2

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 68 0-18178

SHEET OF SHEETS
Exhibit 1

EDPC KEYPUNCH INSTRUCTIONS (Continued) ER 1110-2-106 26 Sept 79

JOB TITLE: INVENTORY OF UNITED STATES DAMS — JOB NO.:

CARD IDENTIFICATION: CARD 3 & 4 — SOURCE: ENG FORM 4474A

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
	CARD NUMBER 3						
1	Identity	1	7				Repeat Item 1 card 0
21	Type of Dam	8	19	14	A	L	
22	Year Completed	20	23	4	N	R	
23	Purposes	24	33	10	A	L	
24	Structural Height	34	37	4	N	R	
25	Hydraulic Height	38	41	4	N	R	
26	Impounding Maximum	42	49	8	N	R	
27	Impounding Normal	50	57	8	N	R	
27A	C. E. District	58	60	3	A	L	
27B	Ownership	61	61	1	A		
27C	Fed. Regulated	62	62	1	A		
27D	Prv't Dams/Fed Land	63	63	1	A		
27E	Soil Con. Ser. Ass't.	64	64	1	A		
27F	Verif. Date (Day)	65	66	2	N	R	
27F	Verif. Date (Mo)	67	69	3	A	L	
27F	Verif Date (Yr)	70	71	2	N	R	
	Card Number	80	80	1	N		Punch a 3
	CARD NUMBER 4						
1	Identity	1	7				Repeat Item 1 card 0
28	Remarks	8	79	72	A	L	
	Card Number	80	80	1	N		Punch a 4

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-1817B

SHEET OF SHEETS

Exhibit 1

ER 1110-2-106
26 Sept 79

EDPC KEYPUNCH INSTRUCTIONS (Continued)

JOB TITLE: INVENTORY OF UNITED STATES DAMS — JOB NO.:

CARD IDENTIFICATION: CARD 5 — SOURCE: ENG FORM 4474A

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
1	CARD NUMBER 5 Identity	1	7				Punch from Part II Item 1
29	D/S Has	8	8	1	N		
30	Crest Length	9	13	5	N	R	
31	Spillway Type	14	14	1	A		
32	Spillway Width	15	18	4	N	R	
33	Maximum Discharge	19	25	7	N	R	
34	Volume of Dam	26	34	9	N	R	
35	Power-Installed	35	40	6	N	R	
36	Power-Proposed	41	46	6	N	R	
37	N.L. Number	47	47	1	N		
38	N.L. Length	48	51	4	N	R	
39	N.L. Width	52	54	3	N	R	
40	N.L. Length	55	58	4	N	R	
41	N.L. Width	59	61	3	N	R	
42	N.L. Length	62	65	4	N	R	
43	N.L. Width	66	68	3	N	R	
44	N.L. Length	69	72	4	N	R	
45	N.L. Width	73	75	3	N	R	
	Card Number	80	80	1	N		Punch a 5

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-1817B B-10 SHEET Exhibit 1 SHEETS

EDPC KEYPUNCH INSTRUCTIONS (Continued) ER 1110-2-106 26 Sept 79

JOB TITLE: INVENTORY OF UNITED STATES DAMS | JOB NO.:

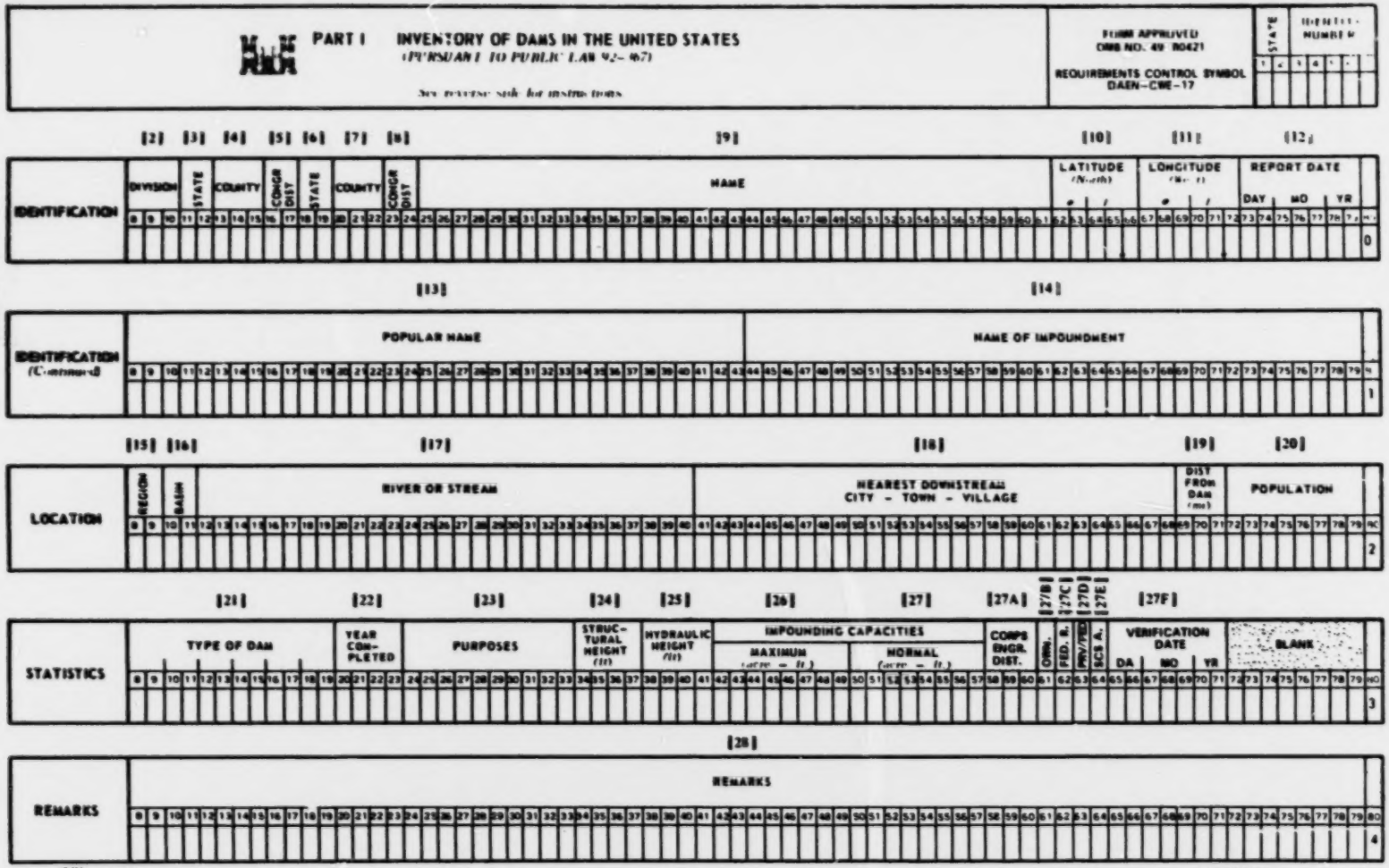
CARD IDENTIFICATION: CARD 6,7,8, & 9 | SOURCE: ENG FORM 4474A

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUST. **	REMARKS-INSTRUCTIONS
	CARD NUMBER 6						
1	Identity	1	7				Repeat Item 1 card 5
46	Owner	8	31	24	A	L	
47	Engineering By	32	55	24	A	L	
48	Construction By	56	79	24	A	L	
	Card Number	80	80	1	N		Punch a 6
	CARD NUMBER 7						
1	Identity	1	7				Repeat Item 1 card 5
49	Design	8	25	18	A	L	
50	Construction	26	43	18	A	L	
51	Operation	44	61	18	A	L	
52	Maintenance	62	79	18	A	L	
	Card Number	80	80	1	N		Punch a 7
	CARD NUMBER 8						
1	Identity	1	7				Repeat Item 1 card 5
53	Inspection By	8	40	33	A	L	
54	Inspection (Day)	41	42	2	N	R	
54	Inspection (Mo)	43	45	3	N	R	
54	Inspection (Yr)	46	47	2	N	R	
55	Authority	48	79	32	A	L	
	Card Number	80	80	1	N		Punch a 8
	CARD NUMBER 9						
1	Identity	1	7				Repeat Item 1 card 5
56	Remarks	8	79	72	A	L	
	CARD NUMBER	80	80	1	N		Punch a 9

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-18178 B-11 SHEET OF SHEETS

Exhibit 1



PART I INVENTORY OF DAMS IN THE UNITED STATES
(PURSUANT TO PUBLIC LAW 92-367)

See reverse side for instructions

FORM APPROVED
OMB NO. 49-R0421

REQUIREMENTS CONTROL SYMBOL
DAEN-CWE-17

DATA | IDENTIFICATION NUMBER

[2] [3] [4] [5] [6] [7] [8] [9] [10] [11] [12]

IDENTIFICATION: DIVISION | STATE | COUNTY | CONGR DIST | STATE | COUNTY | CONGR DIST | NAME | LATITUDE (North) ° / / | LONGITUDE (West) ° / / | REPORT DATE DAY MO YR | 0

[13] [14]

IDENTIFICATION (Continued): POPULAR NAME | NAME OF IMPOUNDMENT | 1

[15] [16] [17] [18] [19] [20]

LOCATION: REGION | BASIN | RIVER OR STREAM | NEAREST DOWNSTREAM CITY - TOWN - VILLAGE | DIST FROM DAM (mi) | POPULATION | 2

[21] [22] [23] [24] [25] [26] [27] [27A] [27B] [27C] [27D] [27E] [27F]

STATISTICS: TYPE OF DAM | YEAR COMPLETED | PURPOSES | STRUCTURAL HEIGHT (ft) | HYDRAULIC HEIGHT (ft) | IMPOUNDING CAPACITIES: MAXIMUM (acre-ft) | NORMAL (acre-ft) | CORPS ENGR. DIST. | OWN. | FED. R. | PRIV/FED | SCS A. | VERIFICATION DATE DA MO YR | BLANK | 3

[28]

REMARKS: REMARKS | 4

ENG FORM 1 DEC 77 6474

EXHIBT 2

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GENERAL INSTRUCTIONS

This form is for use in preparing the inventory of dams in the United States under the requirements of the National Program for the Inspection of Dams, P.L. 92-367. All items of Part I and Part II (Lines 0-9) must be completed as instructed below. Print entries distinctly in ink or pencil. For letters o, z, and i, write Ø, Z, and I.

Write only one letter or numeral in each space; do not use more letters than blocks allowed for an item. Do not abbreviate on Part I. Leave one space between words and no space between code letters.

For all letter codes or word entries place first letters in left block of field. In word fields any alphabetic, numeric or special character may be entered. For all numerical entries, use only numerals placing the last digit of number in the right block of field, including trailing zeros. Do not include a decimal point! In fields where decimals are required values are to be placed around the decimal point printed on the form.

Leave blank those spaces where item does not apply, e.g., do not write "N/A", "-", "None", etc., unless instructed to do so by specific instructions. Use the remarks line when additional space is needed for an item, or to clarify an entry. Preface each remark with the item number. (See Item [28] or [56] instructions)

PART I

Item [1] IDENTITY. The Division Engineer will assign and control the identity for dams in the states for which he is responsible. The first two characters of the identity will be the two-letter state abbreviation in accordance with Federal Information Processing Standards Publication, June 15, 1970 (FIPS PUB 6-1). In cases where a dam is physically located in two or more states, one state will be designated as the principal state for the identity. The last five (5) characters of the identity will be a sequential number assigned to identify dams within a state.

LINE 0

Item [2] DIVISION: Enter the three (3) letter office symbol for the division making the report in accordance with ABBR Report Code, Appendix B, ER 1130-2-1, Civil Works Information System; e.g., NAD, ORD, SWD, etc.

Location:

Item [3] STATE: Enter two (2) letter principal state abbreviation in accordance with FIPS PUB 6-1.
Item [4] COUNTY: Enter three (3) digit county identification in accordance with FIPS PUB 6-1.
Item [5] CONG DIST: Enter one (1) or two (2) digit number for congressional districts in which dam is located.
Item [6], [7], and [8] (Use second location for structures situated in more than one state.)

Item [9] DAM NAME: Enter official name of dam. Do not abbreviate unless the abbreviation is a part of the official name. For dams that do not have a name, create a name by combining the two (2) letter state abbreviation plus "NO NAME" plus a sequential number. Example: if two dams in the State of Alabama do not have names, they would be named as ALNONAME1 and ALNONAME2.
Item [10] & [11] LATITUDE AND LONGITUDE: Enter the latitude and longitude in degrees, minutes and tenths of a minute. All geographical location items pertain to dam as its maximum section.
Item [12] REPORT DATE: Enter the one (1) or two (2) digits for day, the first three (3) letters of the month and a two (2) digit year (e.g., 12 JAN74) in which the data has been revised, updated or otherwise changed.

LINE 1

Item [13] POPULAR NAME OF DAM: If (other than the official name of the dam) in common use, enter the name in this space. Leave blank if not applicable.
Item [14] NAME OF IMPOUNDMENT: Enter official name of lake or reservoir. Leave blank if reservoir does not have a name.

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LINE 2

Item 15 & 16: REGION AND BASIN: Enter two (2) digit numbers for Region and Basin in accordance with Appendix C ER 18-2-1, Civil Works Information System.
Item 17: RIVER OR STREAM: Enter official name of river or stream on which the dam is built. If stream is without name indicate as tributary to river named, e.g., TR-COLORADO. If off stream, enter name of river plus "OFFSTREAM."
Item 18: NEAREST DOWNSTREAM CITY-TOWN-VILLAGE: Enter the nearest downstream city-town-village of such size which can be located on a general map.
Item 19: DISTANCE FROM DAM: Enter distance from dam to nearest downstream city-town-village to the nearest mile.
Item 20: POPULATION: Enter population of city-town-village given in Item 18.

LINE 3

Item 22: TYPE OF DAM: Enter two (2) letter codes, in any order, to describe type of dam.

EARTH	RE	BUTTRESS	CB	OTHER	OT
ROCKFILL	TR	ARCH	VA	(Describe "other" in remarks)	
GRAVITY	PG	MULTI-ARCH	MV		

Item 23: YEAR COMPLETED: Enter year when the main dam structure was completed and ready for use. If only approximate year can be determined, note this in remarks.
Item 24: PURPOSES: Enter one (1) letter codes that describe the purposes for which the reservoir is used. The order entered should indicate the relative decreasing importance of the project purposes.

IRRIGATION	- I	WATER SUPPLY	- S	DEBRIS CONTROL	- D
HYDROELECTRIC	- H	RECREATION	- R	OTHER	- O
FLOOD CONTROL	- C	STOCK OR SMALL		(Describe "other" in remarks)	
NAVIGATION	- N	FARM POND	- P		

Item 25: STRUCTURAL HEIGHT: Enter, to the nearest foot, the structural height of the dam which is defined as; the overall vertical distance from the lowest point of foundation surface to the top of the dam.
Item 25: HYDRAULIC HEIGHT: Enter, to the nearest foot, the hydraulic height of the dam which is defined as; the effective height of the dam with respect to the maximum storage capacity, measured from the natural bed of the stream or watercourse at the downstream toe of the barrier, or if it is not across a stream or watercourse, the height from the lowest elevation of the outside limit of the barrier to the maximum storage elevation.

Impounding Capabilities:

Item 26: MAXIMUM: Enter the acre feet for maximum storage which is defined as; the total storage space in a reservoir below the maximum attainable water surface elevation, including any surcharge storage.
Item 27: NORMAL: Enter the acre feet for normal storage which is defined as; the total storage space in a reservoir below the normal retention level, including dead and inactive storage and excluding any flood control or surcharge storage.

Item 27A: CORPS OF ENGINEERS DISTRICT: Enter the three character Corps of Engineers ABBR report code in which the dam is geographically located, in accordance with Appendix B, ER 19-2-1, Civil Works Information System, e.g., NAN, ORH, SWF, etc.
Item 27B: OWNERSHIP: Enter N, for Non-Federal; G, for Federal Gov't. Agencies other than the Corps of Engineers; C for Corps of Engineers.
Item 27C: FEDERALLY REGULATED: Enter N for No; Enter Y for Yes.
Item 27D: PRIVATE DAMS ON FEDERAL LAND: Enter N for No; Enter Y for Yes.
Item 27E: ASSISTANCE BY SOIL CONSERVATION SERVICE: Enter N for None; T for Technical Assistance; F for Financial Assistance; B for Both Technical and Financial Assistance.
Item 27F: VERIFICATION: Date the data was verified as being complete and correct. Enter date as described in Item 12.

LINE 4:

Item 28: REMARKS: Preface remarks with the item number to which it pertains, e.g., 22-ORIGINALLY CONSTRUCTED IN 1928. 23-SETTLING BASIN. Only one remark line should be used for PART I remarks.

EXHIBIT 2

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DISCONTINUED 1 OCT 77

PART II - INVENTORY OF DAMS IN THE UNITED STATES
(PURSUANT TO PUBLIC LAW 92-367)

See reverse side for instructions

FORM APPROVED OMB NO. 49-R0421

REQUIREMENTS CONTROL SYMBOL DAEN-CWE-17

STATE | IDENTITY NUMBER (1 2 | 3 4 5 6 7)

[29] [30] [31] [32] [33] [34] [35] [36] [37] [38] [39] [40] [41] [42] [43] [44] [45]

STATISTICS

0 SNAZ	CREST LENGTH (ft)	SPILLWAY TYPE	SPILLWAY WIDTH (ft)	SPILLWAY MAXIMUM DISCHARGE (c.f.s.)	VOLUME OF DAM (CY)	POWER CAPACITY INSTALLED (MW)	POWER CAPACITY PROPOSED (MW)	NAV	NAVIGATION LOCKS LENGTH (ft)	NAVIGATION LOCKS WIDTH (ft)	NAVIGATION LOCKS LENGTH (ft)	NAVIGATION LOCKS WIDTH (ft)	NAVIGATION LOCKS LENGTH (ft)	NAVIGATION LOCKS WIDTH (ft)	NAVIGATION LOCKS LENGTH (ft)	NAVIGATION LOCKS WIDTH (ft)	BLANK	
0 9 10 11 12 13	14 15 16 17 18	19	20 21 22 23 24 25	26 27 28 29 30 31 32 33 34	35 36 37 38 39 40 41 42 43 44 45	46 47	48 49 50 51 52 53 54 55 56 57 58 59 60 61	62 63 64 65 66 67 68 69 70 71 72 73 74 75	76 77 78 79	80								5

[46] [47] [48]

MISC DATA

OWNER	ENGINEERING BY	CONSTRUCTION BY	
0 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47	48 49 50 51 52 53 54 55	56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80

6

[49] [50] [51] [52]

MISC. DATA (Continued)

REGULATORY AGENCY				
DESIGN	CONSTRUCTION	OPERATION	MAINTENANCE	
0 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43	44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61	62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79	80

7

[53] [54] [55]

MISC. DATA (Continued)

INSPECTION BY	INSPECTION DATE DAY | MO | YR	AUTHORITY FOR INSPECTION	
0 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40	41 42 43 44 45 46 47	48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79	80

8

[56]

REMARKS

REMARKS	
0 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47	48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80

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EXHIBIT 2

PART II

Item 1 IDENTITY. Enter Identity per GENERAL INSTRUCTIONS on PART I.

LINE 5.

Item [29] D/S HAZ. Enter the digit that most closely represents the hazard potential that could occur to the downstream (D/S) area resulting from failure or mis-operation of the dam or facilities.

HAZARD POTENTIAL

CATEGORY	LOSS OF LIFE (Extent of Development)	ECONOMIC LOSS (Extent of Development)
3 = Low	None expected (No permanent structures for human habitation)	Minimal (Undeveloped to occasional structures or agriculture)
2 = Significant	Few (No urban developments and no more than a small number of inhabitable structures)	Appreciable (Notable agriculture, industry or structures)
1 = High	More than few	Excessive (Extensive community, industry or agriculture)

Item [30] CREST LENGTH: Enter, to the nearest foot, the crest length of the dam which is defined as; the total horizontal distance measured along the axis at the elevation of the top of dam between abutments or ends of dam. Note that this includes spillway width, powerhouse sections, and navigation locks where they form a continuous part of the dam water retaining structure. Detached spillways, locks, and powerhouses shall not be included.

Spillway:

Item [31] TYPE: Enter the one letter code that applies.

CONTROLLED = C UNCONTROLLED = U NONE = N

Item [32] WIDTH: Enter to the nearest foot, the width of the spillway available for discharge when the reservoir is at its maximum designed water surface elevation.
Item [33] MAXIMUM DISCHARGE: Enter the number of cubic feet per second which the spillway is capable of discharging when the reservoir is at its maximum designed water surface elevation.

Volume of Dam:

Item [34] VOLUME OF DAM: Enter the total number of cubic yards occupied by the materials used in the dam structure. If volume of separate materials is known, enter in remarks. Include portions of powerhouses, locks and spillways only if integral with the dam and required for structural stability.

Power Capacity:

Item [35] INSTALLED: Enter installed capacity to one tenth (1/10) Megawatt as of the report date.
Item [36] PROPOSED: Enter the future additional capacity proposed to one tenth (1/10) Megawatt.

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Navigation Locks:

Item [37] NUMBER: Enter the number of existing navigation locks for the project.

Item [38] LENGTH: Enter to the nearest foot the length of the navigation lock.

Item [39] WIDTH: Enter to the nearest foot the width of the navigation lock.

Item [40] thru [45] Enter the lengths and widths of additional locks.

LINE 6:

Item [46] OWNER: Enter name of owner. Abbreviate as necessary.
Item [47] ENGINEERING BY: Enter name of organization that engineered the main dam structure. Abbreviate as required.
Item [48] CONSTRUCTION BY: Enter name of construction agency responsible for construction of main structure. Abbreviate as required.

LINE 7:

Regulatory Agency:

Item [49] DESIGN: Enter the name of the organization other than the owner having regulatory or approval authority over the design of the dam. If no organization other than the owner has regulatory or approval authority over the design of the dam indicate NONE.
Item [50] CONSTRUCTION: Enter the name of the organization other than the owner having regulatory authority or inspection responsibilities over the construction of the dam. If no organization other than the owner has regulatory authority or inspection responsibilities over the construction of the dam indicate NONE.
Item [51] OPERATION: Enter the name of the organization other than the owner having regulatory authority, operational control, or surveillance responsibilities over the operation of the dam. If no organization other than the owner has regulatory authority, operational control or surveillance responsibilities over the operation of the dam indicate NONE.
Item [52] MAINTENANCE: Enter the name of the organization other than the owner having regulatory authority or inspection or surveillance responsibilities over the maintenance of the dam. If no organization other than the owner has regulatory authority or inspection or surveillance responsibilities over the maintenance of the dam indicate NONE.

LINE 8:

Inspection:

Item [53] BY: Enter the name of the organization that performed the last safety inspection. Abbreviate as required. If no inspection has been performed enter NONE.
Item [54] DATE: Enter the one (1) or two (2) digits for day, the first three (3) letters of the month and a two (2) digit year when the inspection was performed. If not applicable, leave blank.
Item [55] AUTHORITY FOR INSPECTION: Enter the legislative or regulatory authority for performing the inspection indicated in item 53, e.g., P.L. 92-367; Div 3, Water Code, State of Calif; ER 1110-2-100; etc.

LINE 9:

Item [56] REMARKS: Preface remarks with the item number to which it pertains. e.g., 34.2, 500,000 c.y. conc. 475,000 c.y. earthfill. Only one Remarks line should be used for PART II remarks.

EXHIBIT 2

Appendix C—Hydrologic and Hydraulic Assessment of Dams

1. Phase I inspections are not intended to provide detailed hydrologic and hydraulic analyses of dam and reservoir capabilities. However, when such analyses are available, they should be evaluated for reliability and completeness. If a project's ability to pass the appropriate flood (see Table 3, page D-12 of Recommended Guidelines) can be determined from available information of a brief study, such an assessment should be made. It should be noted that hydrologic and hydraulic analyses connected with the Phase I inspections should be based on approximate methods or systematized computer programs that take minimal effort. The Hydrologic Engineering Center (HEC) has developed a special computer program for hydrologic and hydraulic analyses to be used with the Phase I inspection program. Other Field Operating Agencies have developed similar computer programs or generalized procedures which are acceptable for use. All such efforts should be completed with minimum resources.

2. A finding that a dam will not safely pass the flood indicated in the Recommended Guidelines does not necessarily indicate that the dam should be classified as unsafe. The degree of inadequacy of the spillway to pass the appropriate flood and the probable adverse impacts of dam failure because of overtopping must be considered in making such classification. The following criteria have been selected which indicate when spillway capacity is so seriously inadequate that a project must be classified as unsafe. All of the following conditions must prevail before designating a dam unsafe:

a. There is high hazard to loss of life from large flows downstream of the dam.

b. Dam failure resulting from overtopping would significantly increase the hazard to loss of life downstream from the dam from that which would exist just before overtopping failure.

c. The spillway is not capable of passing one-half of the probable maximum flood without overtopping the dam and causing failure.

3. The above criteria are generally adequate for evaluating most non-Federal dams. However, in a few cases the increased hazard potential from overtopping and failure is so great as to result in catastrophic consequences. In such cases, the evaluation of condition 2c should utilize a flood more closely approximating the full probable maximum flood rather than one-half the flood. An example of such a situation would be a large dam immediately above a highly populated flood plain, with little likelihood of time for evacuation in the event of an emergency.

4. Conditions 2a and 2b require an approximation of housing location in relation to flooded areas. Resources available in Phase I inspections do not permit detailed surveys or time-consuming studies to develop such relationships. Therefore, rough estimates will generally be made from data obtained during the inspection and from readily available maps and drawings. Brief computer routings such as the HEC-1 dam break analysis, using available data, are recommended in marginal cases. The HEC-1, dam break version, is available on the Boeing Computer Services or may be obtained from the Hydrologic Engineering Center, Davis, California. Available resources do not permit detailed studies or investigations to establish the amount of overtopping that would cause a dam to fail, as designated in condition 2c. Professional judgment and available information will have to be used in these determinations. When detailed investigations and studies are required to make a reasonable judgment of the conditions which designate an unsafe dam, the inspection report should recommend that such studies be the responsibility of the dam owner.

5. During the inspection of a dam, consideration should be given to impacts on other dams located downstream from the project being inspected. When failure of a dam would be likely to cause failure of another dam(s) downstream, its designation as an unsafe dam could result in multiple impacts. Therefore, the information should be explicitly described in the inspection report. Such information may be vital to the priorities established by State Governors for dam improvements. Similarly, when the failure of an upstream dam (classified as unsafe) could cause failure of the dam being inspected, this information should be prominently displayed in the inspection report.

6. The criteria established in paragraph 2 for designating unsafe dams because of seriously inadequate spillways are considered reasonable and prudent. They provide a consistent bases for declaring unsafe dams and also serve as an effective compromise between the Recommended Guidelines and unduly low standards suggested by special interests and individuals unfamiliar with flood hazard potential.

7. The Hydrometeorological Branch (HMB) of the National Weather Service has reviewed some 500 experienced large storms in the United States. The purpose of the review was to ascertain the relative magnitude of experienced large storms to probable maximum precipitation (PMP) and their distribution throughout the country. Their review reveals that about 25 percent of the major storms have exceeded 50 percent of the probable maximum precipitation for one or more combinations of area and

duration. In fact some storms have very closely approximated the PMP values. Exhibits C-1 thru C-5 indicate locations where experienced storms have exceeded 50 percent of the PMP.

8. There are several options to consider when selecting mitigation measures to avoid severe consequences of a dam failure from overtopping. The following measures may be required by a Governor when sufficient legal authority is available under State laws and a dam presents a serious threat to loss of life.

a. Remove the dam.

b. Increase the height of dam and/or spillway size to pass the probable maximum flood without overtopping the dam.

c. Purchase downstream land that would be adversely impacted by dam failure and restrict human occupancy.

d. Enhance the stability of the dam to permit overtopping by the probable maximum flood without failure.

e. Provide a highly reliable flood warning system (generally does not prevent damage but avoids loss of life).

TABLE 1—STORMS WITH RAINFALL ≥150% OF PMP, U.S. EAST OF THE 105TH MERIDIAN (FOR 10 MI², 6 HOURS; 200 MI², 24 HOURS AND/OR 1,000 MI², 48 HOURS)

Storm date	Index No.	Corps assignment No. (if available)	Storm center		Latitude	Longitude
			Town	State		
July 26, 1819	1		Catskill	NY	42°12'	73°53'
Aug. 5, 1843	2		Concordville	PA	39°53'	75°32'
Sept. 10–13, 1878	3	OR 9–19	Jefferson	OH	41°45'	80°46'
Sept. 20–24, 1882	4	NA 1–3	Paterson	NJ	40°55'	74°10'
June 13–17, 1886	5	LMV 4–27	Alexandria	LA	31°19'	92°33'
June 27–July 11, 1899	6	GM 3–4	Turnersville	TX	30°52'	96°32'
Aug. 24–28, 1903	7	MR 1–10	Woodburn	IA	40°57'	93°35'
Oct. 7–11, 1903	8	GL 4–9	Paterson	NJ	40°55'	74°10'
July 18–23, 1909	9	UMV 1–11B	Ironwood	MI	46°27'	90°11'
July 18–23, 1909	10	UMV 1–11A	Beaulieu	MN	47°21'	95°48'
July 22–23, 1911	11		Swede Home	NB	40°22'	96°54'
July 19–24, 1912	12	GL 2–29	Merrill	WI	45°11'	89°41'
July 13–17, 1916	13	SA 2–9	Altapass	NC	35°33'	82°01'
Sept. 8–10, 1921	14	GM 4–12	Taylor	TX	30°35'	97°18'
Oct. 4–11, 1924	15	SA 4–20	New Smyrna	FL	29°07'	80°55'
Sept. 17–19, 1926	16	MR 4–24	Boyden	IA	43°12'	96°00'
Mar. 11–16, 1929	17	UMV 2–20	Elba	AL	31°25'	86°04'
June 30–July 2, 1932	18	GM 5–1	State Fish Hatchery.	TX	30°01'	99°07'
Sept. 16–17, 1932	19		Ripogenus Dam	ME	45°53'	69°09'
July 22–27, 193	20	LMV 2–26	Logansport	LA	31°58'	94°00'
Apr. 3–4 1934	21	SW 2–11	Cheyenne	OK	35°37'	99°40'
May 30–31, 1935	22	MR 3–28A	Cherry Creek	CO	39°13'	104°32'
May 31, 1935	23	GM 5–20	Woodward	TX	29°20'	99°28'
July 6–10, 1935	24	NA 1–27	Hector	NY	42°30'	76°53'
Sept. 2–6, 1935	25	SA 1–28	Easton	MD	38°46'	76°01'
Sept. 14–16, 1936	26	GM 5–7	Broome	TX	31°47'	100°50'
June 19–20, 1939	27		Snyder	TX	32°44'	100°55'
July 4–5, 1939	28		Simpson	KY	38°13'	83°22'
Aug. 19, 1939	29	NA 2–3	Manahawkin	NJ	39°42'	74°16'
June 3–4, 1940	30	MR 4–5	Grant Township	NB	42°01'	96°53'
Aug. 6–9, 1940	31	LMV 4–24	Miller Isl	LA	29°45'	92°10'
Aug. 10–17, 1940	32	SA 5–19A	Keysville	VA	37°03'	78°30'
Sept. 1, 1940	33	NA 2–4	Ewan	NJ	39°42'	75°12'
Sept. 2–6, 1940	34	SW 2–18	Hallet	OK	36°15'	96°36'
Aug. 28–31, 1941	35	UMV 1–22	Haywood	WI	46°00'	91°28'
Oct. 17–22, 1941	36	SA 5–8	Trenton	FL	29°48'	82°57'
July 17–18, 1942	37	OR 9–23	Smethport	PA	41°50'	78°25'
Oct. 11–17, 1942	38	SA 1–28A	Big Meadows	VA	38°31'	78°26'
May 6–12, 1943	39	SW 2–20	Warner	OK	35°29'	95°16'
May 12–20, 1943	40	SW 2–21	Nr. Mounds	OK	35°52'	96°04'
July 27–29, 1943	41	GM 5–21	Devers	TX	30°02'	94°35'
Aug. 4–5, 1943	42	OR 3–30	Nr. Glenville	WV	38°56'	80°50'
June 10–13, 1944	43	MR 6–15	Nr. Stanton	NB	41°52'	97°03'
Aug. 12–15, 1946	44	MR 7–2A	Cole Camp	MO	38°40'	93°13'
Aug. 12–16, 1946	45	MR 7–2B	Nr. Collinsville	IL	38°40'	89°59'
Sept. 26–27, 1946	46	GM 5–24	Nr. San Antonio	TX	29°20'	98°29'
June 23–24, 1948	47		Nr. Del Rio	TX	29°22'	100°37'
Sept. 3–7, 1950	48	SA 5–8	Yankeetown	FL	29°03'	82°42'
June 23–26, 1954	49	SW 3–22	Vic Pierce	TX	30°22'	101°23'
Aug. 17–20, 1955	50	NA 2–22A	Westfield	MA	42°07'	72°45'

TABLE 1—STORMS WITH RAINFALL ≥150% OF PMP, U.S. EAST OF THE 105TH MERIDIAN (FOR 10 MI², 6 HOURS; 200 MI², 24 HOURS AND/OR 1,000 MI², 48 HOURS)—Continued

Storm date	Index No.	Corps assignment No. (if available)	Storm center		Latitude	Longitude
			Town	State		
May 15–16, 1957	51		Hennessey	OK	36°02′	97°56′
June 14–15, 1957	52		Nr. E. St. Louis	IL	38°37′	90°24′
June 23–24, 1963	53		David City	NB	41°14′	97°05′
June 13–20, 1965	54		Holly	CO	37°43′	102°23′
June 24, 1966	55		Glenullin	ND	47°21′	101°19′
Aug. 12–13, 1966	56		Nr. Greely	NB	41°33′	98°32′
Sept. 19–24, 1967	57	SW 3–24	Falfurrias	TX	27°16′	98°12′
July 16–17, 1968	58		Waterloo	IA	42°30′	92°19′
July 4–5, 1969	59		Nr. Wooster	OH	40°50′	82°00′
Aug. 19–20, 1969	60	NA 2-3	Nr. Tyro	VA	37°49′	79°00′
June 9, 1972	61		Rapid City	SD	44°12′	103°31′
June 19–2J, 1972	62		Zerbe	PA	40°37′	76°31′
July 21–22, 1972	63		Nr. Cushing	MN	46°10′	94°30′
Sept. 10–12, 1972	64		Harlan	IA	41°43′	95°15′
Oct. 10–11, 1973	65		Enid	OK	36°25′	97°52′

TABLE 2—STORMS WITH RAINFALL ≥ 50% OF PMP, U.S. WEST OF CONTINENTAL DIVIDE (FOR 10 MI² 6 HOURS OR 1,000 MI² FOR ONE DURATION BETWEEN 6 AND 72 HOURS)

Storm date	Index No.	Storm center		Latitude	Longitude	Duration for 1,000 mi²
		Town	State			
Aug. 11, 1890	1	Palmetto	NV	37°27′	117°42′	
Aug. 12, 1891	2	Campo	CA	32°36′	116°28′	
Aug. 28, 1898	3	Ft. Mohave	AZ	35°03′	114°36′	
Oct. 4–6, 1911	4	Gladstone	CO	37°53′	107°39′	
Dec. 29, 1913–Jan. 3, 1914	5		CA	39°55′	121°25′	
Feb. 17–22, 1914	6	Colby Ranch	CA	34°18′	118°07′	
Feb. 20–25, 1917	7		CA	37°35′	119°36′	
Sept. 13, 1918	8	Red Bluff	CA	40°10′	122°14′	
Feb. 26–Mar 4, 1938	9		CA	34°14′	117°11′	
Mar. 30–Apr. 2, 1931	10		ID	46°30′	114°50′	24
Feb. 26, 1932	11	Big Four	WA	48°05′	121°30′	
Nov. 21, 1933	12	Tatoosh Is	WA	48°23′	124°44′	
Jan. 20–25, 1935	13		WA	47°30′	123°30′	6
Jan. 20–25, 1935	14		WA	47°00′	122°00′	72
Feb. 4–8, 1937	15	Cyamaca Dam	CA	33°00′	116°35′	
Dec. 9–12, 1937	16		CA	38°51′	122°43′	
Feb. 27–Mar. 4, 1938	17		AZ	34°57′	111°44′	12
Jan. 19–24, 1943	18		CA	37°35′	119°25′	18
Jan. 19–24, 1943	19	Hoegee's Camp	CA	34°13′	118°02′	
Jan. 30–Feb. 3, 1945	20		CA	37°35′	119°30′	
Dec. 27, 1945	21	Mt. Tamalpias	CA	37°54′	122°34′	
Nov. 13–21, 1950	22		CA	36°30′	118°30′	24
Aug. 25–30, 1951	23		AZ	34°07′	112°21′	72
July 19, 1955	24	Chiatovich Flat	CA	37°44′	118°15′	
Aug. 16, 1958	25	Morgan	UT	41°03′	111°38′	
Sept. 18, 1959	26	Newton	CA	40°22′	122°12′	
June 7–8, 1964	27	Nyack Ck	MT	48°30′	113°38′	12
Sept. 3–7, 1970	28		UT	37°38′	109°04′	6
Sept. 3–7, 1970	29		AZ	33°49′	110°56′	6
June 7, 1972	30	Bakersfield	CA	35°25′	119°03′	
Dec. 9–12, 1937	31		CA	39°45′	121°30′	48

90-115 O—82——28

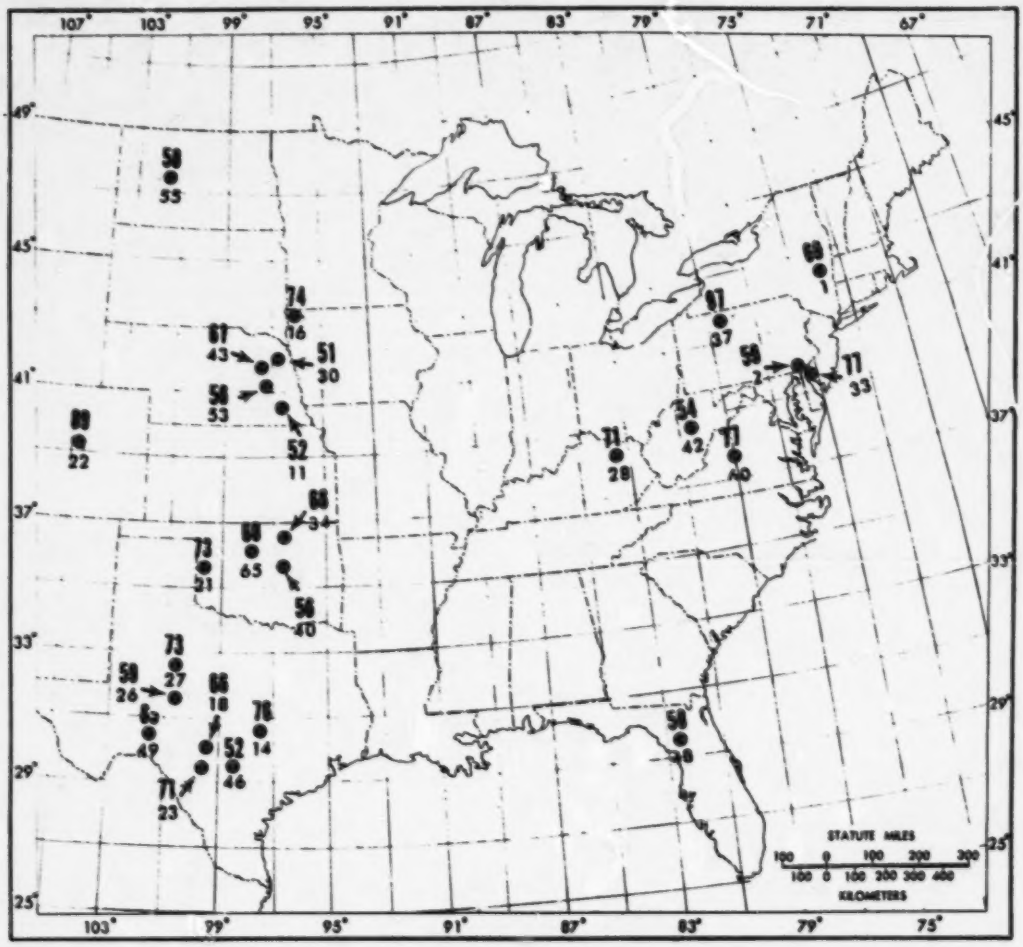

Plate 1: Observed point rainfalls ≥ 50% of all-season PMP, U.S. east of 105th meridian for 10 mi^2 6 hours. (Large number is % of PMP, small number is storm index, see table 1.)

Exhibit C-1

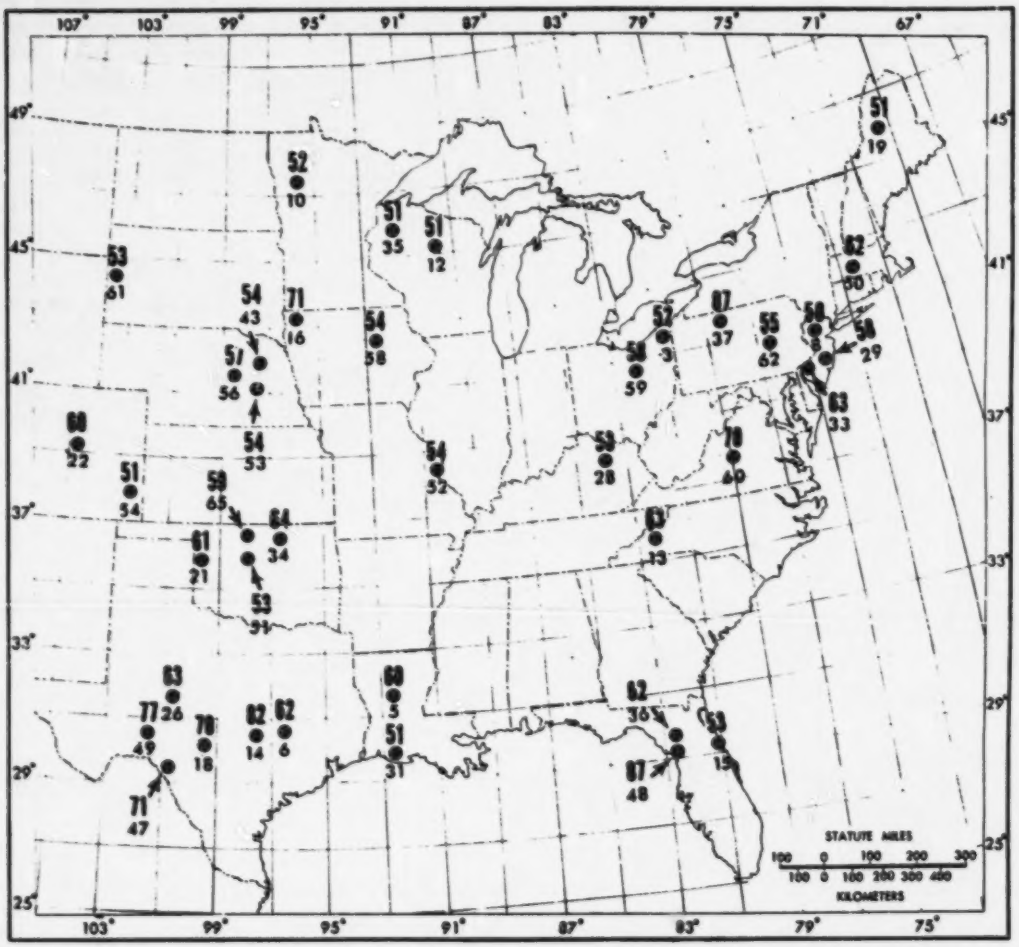

Plate 2: Observed rainfalls ≥ 50% of all-season PMP, U.S. east of 105th meridian for 200 mi^2 24 hours. (Large number is % of PMP, small number is storm index, see table 1.)

Exhibit C-2

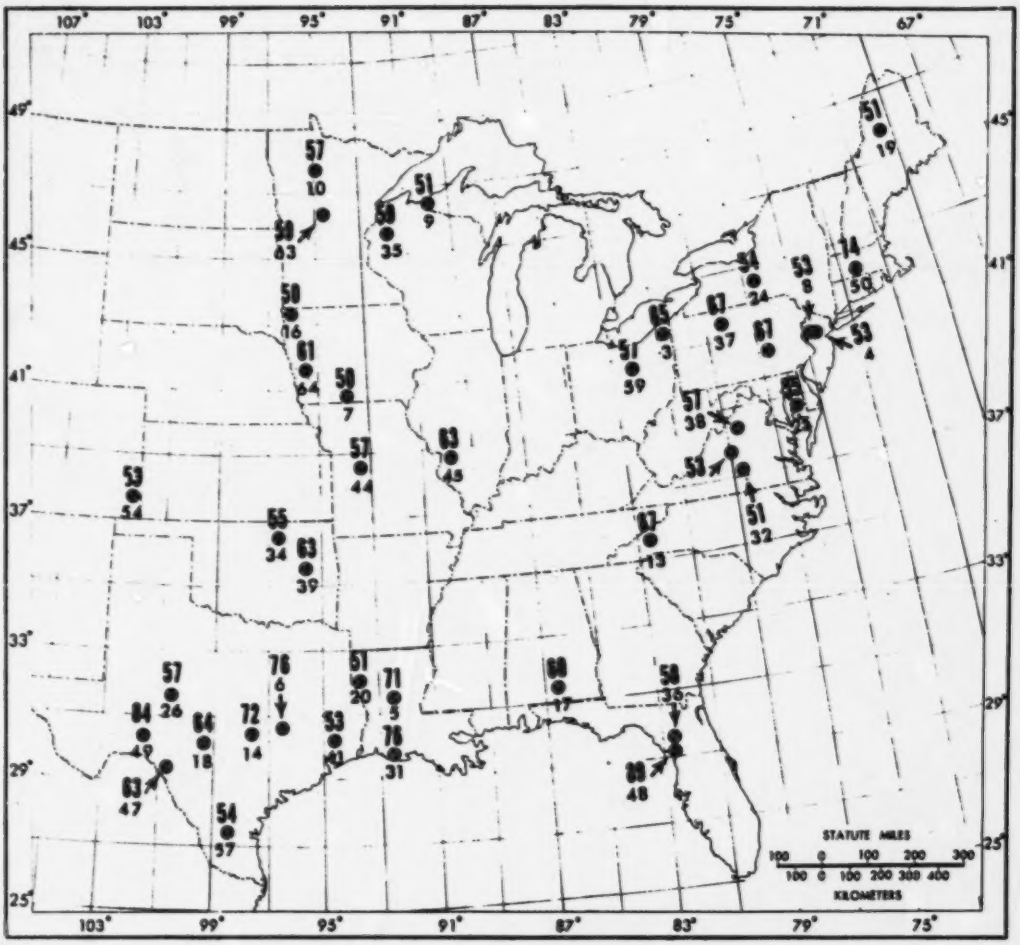

Plate 3: Observed rainfalls ≥ 50% of all-season PMP, U.S. east of the 105th meridian for 1000 mi^2 48 hours. (Large number is % of PMP, small number is storm index, see table 1.)

Exhibit C-3

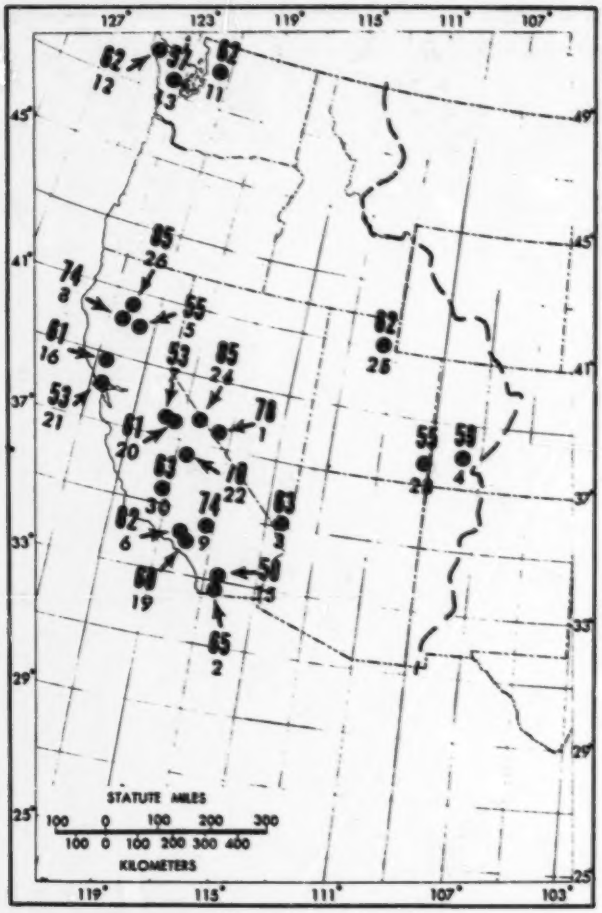

Plate 4: Observed point rainfalls ≥ 50% of all-season PMP, U.S. west of the Continental Divide for 10 mi^2 for 6 hours. (Large number is % of PMP. Small number is storm index, see table 2.)

Exhibit C-4

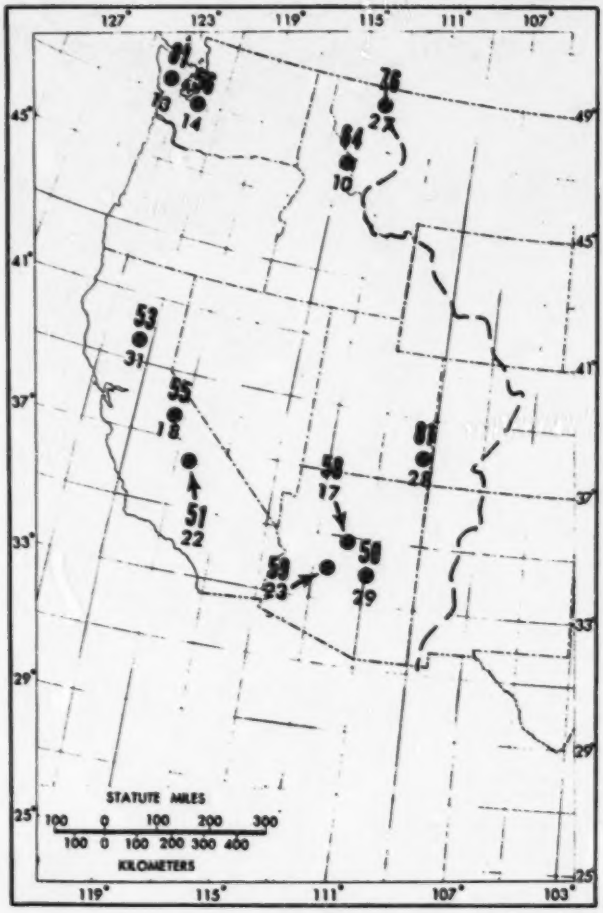

Plate 5: Observed rainfalls ≥ 50% of all-season PMP, U.S. west of the Continental Divide for 1000 mi^2 for one duration between 6 and 72 hours. (Large number is % of PMP. Small number is storm index, see table 2.)

Exhibit C-5

Appendix D—Recommended Guidelines for Safety Inspection of Dams

Department of the Army—Office of the Chief of Engineers

Preface

The recommended guidelines for the safety inspection of dams were prepared to outline principal factors to be weighed in the determination of existing or potential hazards and to define the scope of activities to be undertaken in the safety inspection of dams. The establishment of rigid criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions at a particular dam and in recognition of the many factors involved, some of which may not be precisely known. This can only be done by competent, experienced engineering judgment, which the guidelines are intended to supplement and not supplant. The guidelines are intended to be flexible, and the proper flexibility must be achieved through the employment of experienced engineering personnel.

Conditions found during the investigation which do not meet guideline recommendations should be assessed by the investigator as to their import from the standpoint of the involved degree of risk. Many deviations will not compromise project safety and the investigator is expected to identify them in this manner if that is the case. Others will involve various degrees of risk, the proper evaluation of which will afford a basis for priority of subsequent attention and possible remedial action.

The guidelines present procedures for investigating and evaluating existing conditions for the purpose of identifying deficiencies and hazardous conditions. The two phases of investigation outlined in the guidelines are expected to accomplish only this and do not encompass in scope the engineering which will be required to perform the design studies for corrective modification work.

It is recognized that some States may have established or will adopt inspection criteria incongruous in some respects with these guidelines. In such instances assessments of project safety should recognize the State's requirements as well as guideline recommendations.

The guidelines were developed with the help of several Federal agencies and many State agencies, professional engineering organizations, and private engineers. In reviewing two drafts of the guidelines they have contributed many helpful suggestions. Their contributions are deeply appreciated and have made it possible to evolve a document representing a consensus of the engineering fraternity. As experience is gained with use of the guidelines, suggestions for future revisions will be generated. All such suggestions should be directed to the Chief of Engineers, U.S. Army, DAEN-CWE-D, Washington, D.C. 20314.

Recommended Guidelines for Safety Inspection of Dams

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CHAPTER 1—INTRODUCTION

1.1. *Purpose.* This document provides recommended guidelines for initial inspection and evaluation of dams to determine if they constitute hazards to human life or property.

1.2. *Applicability.* The procedures and guidelines outlined in this document apply to the inspection and evaluation of all dams as defined in the National Dam Inspection Act, Public Law 92-367. Included in this program are all artificial barriers together with appurtenant works which impound or divert water and which (1) are twenty-five feet or more in height or (2) have an impounding capacity of fifty acre-feet or more. Not included are barriers which are six feet or less in height, regardless of storage capacity, or barriers which have a storage capacity at maximum water storage elevation of fifteen acre-feet or less regardless of height.

1.3. *Authority.* The Dam Inspection Act, Public Law 92-367 (Appendix III), authorized the Secretary of the Army, through the Corps of Engineers, to initiate a program of safety inspection of dams throughout the United States. The Chief of Engineers issues these guidelines pursuant to that authority.

CHAPTER 2—GENERAL REQUIREMENTS

2.1. *Classification of Dams.* Dams should be classified in accordance with size and hazard potential in order to formulate a priority basis for selecting dams to be included in the inspection program and also to provide compatibility between guideline requirements and involved risks. When possible the initial classifications should be based upon information listed in the National Inventory of Dams with respect to size, impoundment capacity and hazard potential. It may be necessary to reclassify dams when additional information becomes available.

2.1.1. *Size.* The classification for size based on the height of the dam and storage capacity should be in accordance with Table 1. The height of the dam is established with respect to the maximum storage potential measured from the natural bed of the stream or watercourse at the downstream toe of the barrier, or if it is not across a stream or watercourse, the height from the lowest elevation of the outside limit of the barrier, to the maximum water storage elevation. For the purpose of determining project size, the maximum storage elevation may be considered equal to the top of dam elevation. Size classification may be determined by either storage or height, whichever gives the larger size category.

TABLE 1—SIZE CLASSIFICATION

Category	Impoundment	
	Storage (ac-ft)	Height (ft)
Small	<1,000 and >50	<40 and >25.
Intermediate	>1,000 and <50,000	>40 and <100
Large	>50,000	>100.

2.1.2. *Hazard Potential.* The classification for potential hazards should be in accordance with Table 2. The hazards pertain to potential loss of human life or property damage in the area downstream of the dam in event of failure or misoperation of the dam or appurtenant facilities. Dams conforming to criteria for the low hazard potential category generally will be located in rural or agricultural areas where failure may damage farm buildings, limited agricultural land, or township and country roads. Significant hazard potential category structures will be those located in predominantly rural or agricultural areas where failure may damage isolated homes, secondary

highways or minor railroads or cause interruption of use or service of relatively important public utilities. Dams in the high hazard potential category will be those located where failure may cause serious damage to homes, extensive agricultural, industrial and commercial facilities, important public utilities, main highways, or railroads.

TABLE 2—HAZARD POTENTIAL CLASSIFICATION

Category	Loss of life (extent of development)	Economic loss (extent of development)
Low	None expected (No permanent structures for human habitation).	Minimal (Undeveloped to occasional structures or agriculture).
Significant	Few (No urban developments and no more than a small number of inhabitable structures).	Appreciable (Notable agriculture, industry or structures).
High	More than few	Excessive (Extensive community, industry or agriculture).

2.2. *Selection of Dams to be Investigated.* The selection of dams to be investigated should be based upon an assessment of existing developments in flood hazard areas. Those dams possessing a hazard potential classified high or significant as indicated in Table 2 should be given first and second priorities, respectively, in the inspection program. Inspection priorities within each category may be developed from a consideration of factors such as size classification and age of the dam, the population size in the downstream flood area, and potential developments anticipated in flood hazard areas.

2.3. *Technical Investigations.* A detailed, systematic, technical inspection and evaluation should be made of each dam selected for investigation in which the hydraulic and hydrologic capabilities, structural stability and operational adequacy of project features are analyzed and evaluated to determine if the dam constitutes a danger to human life or property. The investigation should vary in scope and completeness depending upon the availability and suitability of engineering data, the validity of design assumptions and analyses and the condition of the dam. The minimum investigation will be designated Phase I, and an in-depth investigation designated Phase II should be made where deemed necessary. Phase I investigations should consist of a visual inspection of the dam, abutments and critical appurtenant structures, and a review of readily available engineering data. It is not intended to perform costly explorations or analyses during Phase I. Phase II investigations should consist of all additional engineering investigations and analyses found necessary by results of the Phase I investigation.

2.4. *Qualifications of Investigators.* The technical investigations should be conducted under the direction of licensed professional engineers experienced in the investigation, design, construction and operation of dams, applying the disciplines of hydrologic, hydraulic, soils and structural engineering and engineering geology. All field inspections should be conducted by qualified engineers, engineering geologists and other specialists, including experts on mechanical and electrical operation of gates and controls, knowledgeable in the investigation, design, construction and operation of dams.

CHAPTER 3—PHASE I INVESTIGATION

3.1. *Purpose.* The primary purpose of the Phase I investigation program is to identify expeditiously those dams which may pose hazards to human life or property.

3.2. *Scope.* The Phase I investigation will develop an assessment of the general condition with respect to safety of the project based upon available data and a visual inspection, determine any need for emergency measures and conclude if additional studies, investigation and analyses are necessary and warranted. A review will be made of pertinent existing and available engineering data relative to the design, construction and operation of the dam and appurtenant structures, including electrical and mechanical operating equipment and measurements from inspection and performance instruments and devices; and a detailed systematic visual inspection will be performed of those features relating to the stability and operational adequacy of the project. Based upon findings of the review of engineering data and the visual inspection, an evaluation will be made of the general condition of the dam, including where possible the assessment of the hydraulic and hydrologic capabilities and the structural stability.

3.3. *Engineering Data.* To the extent feasible the engineering data listed in Appendix I relating to the design, construction and operation of the dam and appurtenant structures, should be collected from existing records and reviewed to aid in evaluating the adequacy of hydraulic and hydrologic capabilities and stability of the dam. Where the necessary engineering data are unavailable, inadequate or invalid, a listing should

be made of those specific additional data deemed necessary by the engineer in charge of the investigation and included in the Phase I report.

3.4. *Field Inspections.* The field inspection of the dam, appurtenant stuctures, reservoir area, and downstream channel in the vicinity of the dam should be conducted in a systematic manner to minimize the possibility of any significant feature being overlooked. A detailed checklist should be developed and followed for each dam inspected to document the examination of each significant structural and hydraulic feature including electrical and mechanical equipment for operation of the control facilities that affect the safety of the dam.

3.4.1. Particular attention should be given to detecting evidence of leakage, erosion, seepage, slope instability, undue settlement, displacement, tilting, cracking, deterioration, and improper functioning of drains and relief wells. The adequacy and quality of maintenance and operating procedures as they pertain to the safety of the dam and operation of the control facilities should also be assessed.

3.4.2. Photographs and drawings should be used freely to record conditions in order to minimize descriptions.

3.4.3. The field inspection should include appropriate features and items, including but not limited to those listed in Appendix II, which may influence the safety of the dam or indicate potential hazards to human life or property.

3.5 *Evaluation of Hydraulic and Hydrologic Features.*

3.5.1. *Design Data.* Original hydraulic and hydrologic design assumptions obtained from the project records should be assessed to determine their acceptability in evaluating the safety of the dam. All constraints on water control such as blocked entrances, restrictions on operation of spillway and outlet gates, inadequate energy dissipators or restrictive channel conditions, significant reduction in reservoir capacity by sediment deposits and other factors should be considered in evaluating the validity of discharge ratings, storage capacity, hydrographs, routings and regulation plans. The discharge capacity and/or storage capacity should be capable of safely handling the recommended spillway design flood for the size and hazard potential classification of the dam as indicated in Table 3. The hydraulic and hydrologic determinations for design as obtained from project records will be acceptable if conventional techniques similar to the procedures outlined in paragraph 4.3. were used in obtaining the data. When the project design flood actually used exceeds the recommended spillway design flood, from Table 3, the project design flood will be acceptable in evaluating the safety of the dam.

TABLE 3—HYDROLOGIC EVALUATION GUIDELINES

[Recommended spillway design floods]

Hazard	Size	Spillway design flood (SDF)[1]
Low	Small	50 to 100-yr frequency.
	Intermediate	100-yr to ½ PMF.
	Large	½ PMF to PMF.
Significant	Small	100-yr to ½ PMF.
	Intermediate	½ PMF to PMF.
	Large	PMF.
High	Small	½ PMF to PMF.
	Intermediate	PMF.
	Large	PMF.

[1]The recommended design floods in this column represent the magnitude of the spillway design flood (SDF), which is intended to represent the largest flood that need be considered in the evaluation of a given project, regardless of whether a spillway is provided; i.e., a given project should be capable of safely passing the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

1000-yr=100-Year Exceedence Interval. The flood magnitude expected to be exceeded, on the average, of once in 100 years. It may also be expressed as an exceedence frequency with a one-percent chance of being exceeded in any given year.

PMF=Probable Maximum Flood. The flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from probable maximum precipitation (PMP), which information is generally available from the National Weather Service, NOAA. Most Federal agencies apply reduction factors to the PMP when appropriate. Reductions may be applied because rainfall isohyetals are unlikely to conform to the exact shape of the drainage basin and/or the storm is not likely to center exactly over the drainage basin. In some cases local topography will cause changes from the generalized PMP values, therefore it may be advisable to contact Federal construction agencies to obtain the prevailing practice in specific areas.

3.5.2. *Experience Data.* In some cases where design data are lacking, an evaluation of overtopping potential may be based on watershed characteristics and rainfall and reservoir records. An estimate of the probable maximum flood may also be developed from a conservative, generalized comparison of the drainage area size and the magnitude of recently adopted probable maximum floods for damsites in comparable hydrologic regions. Where the review of such experience data indicates that the recommended spillway design flood would not cause overtopping additional hydraulic and hydrologic determinations will be unnecessary.

3.6. *Evaluation of Structural Stability.* The Phase I evaluations of structural adequacy of project features are expected to be based principally on existing conditions as revealed by the visual inspection, together with available design and construction information and records of performance. The objectives are to determine the existence of conditions which are hazardous, or which with time might develop into safety hazards, and to formulate recommendations pertaining to the need for any additional studies, investigations, or analyses. The results of this phase of the inspection must rely very substantially upon the experience and judgment of the inspecting engineer.

3.6.1. *Design and Construction Data.* The principal design assumptions and analyses obtained from the project records should be assessed. Original design and construction records should be used judiciously, recognizing the restricted applicability of such data as material strengths and permeabilities, geological factors and construction descriptions. Original stability studies and analyses should be acceptable if conventional techniques and procedures similar to those outlined in paragraph 4.4 were employed, provided that review of operational and performance data confirm that the original design assumptions were adequately conservative. The need for such analyses where either none exist or the originals are incomplete or unsatisfactory will be determined by the inspecting engineer based upon other factors such as condition of structures, prior maximum loadings and the hazard degree of the project. Design assumptions and analyses should include all applicable loads including earthquake and indicate the structure's capability to resist overturning, sliding and overstressing with adequate factors of safety. In general seepage and stability analyses comparable to the requirements of paragraph 4.4 should be on record for all dams in the high hazard category and large dams in the significant hazard category. This requirement for other dams will be subject to the opinion of the inspecting engineer.

3.6.2. *Operating Records.* The performance of structures under prior maximum loading conditions should in some instances provide partial basis for stability evaluation. Satisfactory experience under loading conditions not expected to be exceeded in the future should generally be indicative of satisfactory stability, provided adverse changes in physical conditions have not occurred. Instrumentation observations of forces, pressures, loads, stresses, strains, displacements, deflections or other related conditions should also be utilized in the safety evaluation. Where such data indicate abnormal behavior, unsafe movement or deflections, or loadings which adversely affect the stability or functioning of the structure, prompt reporting of such circumstances is required without the delay for preparation of the official inspection report.

3.6.3. *Post Construction Changes.* Data should be collected on changes which have occurred since project construction that might influence the safety of the dam such as road cuts, quarries, mining and groundwater changes.

3.6.4. *Seismic Stability.* An assessment should be made of the potential vulnerability of the dam to seismic events and a recommendation developed with regard to the need for additional seismic investigation. In general, projects located in Seismic Zones 0, 1 and 2 may be assumed to present no hazard from earthquake provided static stability conditions are satisfactory and conventional safety margins exist. Dams in Zones 3 and 4 should, as a minimum, have on record suitable analyses made by conventional equivalent static load methods. The seismic zones together with appropriate coefficients for use in such analyses are shown in Figures 1 through 4. Boundary lines are approximate and in the event of doubt about the proper zone, the higher zone should be used. All high hazard category dams in Zone 4 and high hazard dams of the hydraulic fill type in Zone 3 should have a stability assessment based upon knowledge of regional and local geology, engineering seismology, in situ properties of materials and appropriate dynamic analytical and testing procedures. The assessment should include the possibility of physical displacement of the structures due to movements along active faults. Departure from this general guidance should be made whenever in the judgment of the investigating engineer different seismic stability requirements are warranted because of local geological conditions or other reasons.

Chapter 4—Phase II Investigation

4.1. *Purpose.* The Phase II investigation will be supplementary to Phase I and should be conducted when the results of the Phase I investigation indicate the need for additional in-depth studies, investigations or analyses.

4.2. *Scope.* The Phase II investigation should include all additional studies, investigations and analyses necessary to evaluate the safety of the dam. Included, as required, will be additional visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analysis and structural stability analyses.

4.3. *Hydraulic and Hydrologic Analysis.* Hydraulic and hydrologic capabilities should be determined using the following criteria and procedures. Depending on the project characteristics, either the spillway

design flood peak inflow or the spillway design flood hydrograph should be the basis for determining the maximum water surface elevation and maximum outflow. If the operation or failure of upstream water control projects would have significant impact on peak flow or hydrograph analyses, the impact should be assessed.

4.3.1. *Maximum Water Surface Based on SDF Peak Inflow.* When the total project discharge capability at maximum pool exceeds the peak inflow of the recommended SDF, and operational constraints would not prevent such a release at controlled projects, a reservoir routing is not required. The maximum discharge should be assumed equal to the peak inflow of the spillway design flood. Flood volume is not controlling in this situation and surcharge storage is either absent or is significant only to the extent that it provides the head necessary to develop the release capability required.

4.3.1.1. *Peak for 100-Year Flood.* When the 100-year flood is applicable under the provisions of Table 3 and data are available, the spillway design flood peak inflow may be determined by use of "A Uniform Technique for Determining Flood Frequencies," Water Resources Council (WRC), Hydrology Committee, Bulletin 15, December 1967. Flow frequency information from regional analysis is generally preferred over single station results when available and appropriate. Rainfall-runoff techniques may be necessary when there are inadequate runoff data available to make a reasonable estimate of flow frequency.

4.3.1.2. *Peak for PMF or Fraction Thereof.* When either the Probable Maximum Flood peak or a fraction thereof is applicable under the provisions of Table 3, the unit hydrograph—infiltration loss technique is generally the most expeditious method of computing the spillway design flood peak for most projects. This technique is discussed in the following paragraph.

4.3.2. *Maximum Water Surface Based on SDF Hydrograph.* Both peak and volume are required in this analysis. Where surcharge storage is significant, or where there is insufficient discharge capability at maximum pool to pass the peak inflow of the SDF, considering all possible operational constraints, a flood hydrograph is required. When there are upstream hazard areas that would be imperiled by fast rising reservoirs levels, SDF hydrographs should be routed to ascertain available time for warning and escape. Determination of probable maximum precipitation or 100-year precipitation, which ever is applicable, and unit hydrographs or runoff models will be required, followed by the determination of the PMF or 100-year flood. Conservative loss rates (significantly reduced by antecedent rainfall conditions where appropriate) should be estimated for computing the rainfall excess to be utilized with unit hydrographs. Rainfall values are usually arranged with gradually ascending and descending rates with the maximum rate late in the storm. When applicable, conservatively high snowmelt runoff rates and appropriate releases from upstream projects should be assumed. The PMP may be obtained from National Weather Service (NWS) publications such as Hydrometeorological Report (HMR) 33. Special NWS publications for particular areas should be used when available. Rainfall for the 100-year frequency flood can be obtained from the NWS publication "Rainfall Frequency Atlas of the United States," Technical Paper No. 40; Atlas 2, "Precipitation Frequency Atlas of Western United States;" or other NWS publications. The maximum water surface elevation and spillway design flood outflow are then determined by routing the inflow hydrograph through the reservoir surcharge storage, assuming a starting water surface at the bottom of surcharge storage, or lower when appropriate. For projects where the bottom of surcharge space is not distinct, or the flood control storage space (exclusive of surcharge) is appreciable, it may be appropriate to select starting water surface elevations below the top of the flood control storage for routings. Conservatively high starting levels should be estimated on the basis of hydrometeorological conditions reasonably characteristic for the region and flood release capability of the project. Necessary adjustment of reservoir storage capacity due to existing or future sediment or other encroachment may be approximated when accurate determination of deposition is not practicable.

4.3.3. *Acceptable Procedures.* Techniques for performing hydraulic and hydrologic analyses are generally available from publications prepared by Federal agencies involved in water resources development or textbooks written by the academic community. Some of these procedures are rather sophisticated and require expensive computational equipment and large data banks. While results of such procedures are generally more reliable than simplified methods, their use is generally not warranted in studies connected with this program unless they can be performed quickly and inexpensively. There may be situations where the more complex techniques have to be employed to obtain reliable results; however, these cases will be exceptions rather than the rule. Whenever the acceptability of procedures is in question, the advice of competent experts should be sought. Such expertise is generally available in the Corps of Engineers, Bureau of Reclamation and Soil Conservation Service. Many other agencies, educational facilities and private consultants can also provide expert advice. Regardless of

where such expertise is based, the qualification of those individuals offering to provide it should be carefully examined and evaluated.

4.3.4. *Freeboard Allowances.* Guidelines on specific minimum freeboard allowances are not considered appropriate because of the many factors involved in such determinations. The investigator will have to assess the critical parameters for each project and develop its minimum requirement. Many projects are reasonably safe without freeboard allowance because they are designed for overtopping, or other factors minimize possible overtopping. Conversely, freeboard allowances of several feet may be necessary to provide a safe condition. Parameters that should be considered include the duration of high water levels in the reservoir during the design flood; the effective wind fetch and reservoir depth available to support wave generation; the probability of high wind speed occurring from a critical direction; the potential wave runup on the dam based on roughness and slope; and the ability of the dam to resist erosion from overtopping waves.

4.4 *Stability Investigations.* The Phase II stability investigations should be compatible with the guidelines of this paragraph.

4.4.1 *Foundation and Material Investigations.* The scope of the foundation and materials investigation should be limited to obtaining the information required to analyze the structural stability and to investigate any suspected condition which would adversely affect the safety of the dam. Such investigations may include borings to obtain concrete, embankment, soil foundation, and bedrock samples; testing specimens from these samples to determine the strength and elastic parameters of the materials, including the soft seams, joints, fault gouge and expansive clays or other critical materials in the foundation; determining the character of the bedrock including joints, bedding planes, fractures, faults, voids and caverns, and other geological irregularities; and installing instruments for determining movements, strains, suspected excessive internal seepage pressures, seepage gradients and uplift forces. Special investigations may be necessary where suspect rock types such as limestone, gypsum, salt, basalt, claystone, shales or others are involved in foundations or abutments in order to determine the extent of cavities, piping or other deficiencies in the rock foundation. A concrete core drilling program should be undertaken only when the existence of significant structural cracks is suspected or the general qualitative condition of the concrete is in doubt. The tests of materials will be necessary only where such data are lacking or are outdated.

4.4.2. *Stability Assessment.* Stability assessments should utilize in situ properties of the structure and its foundation and pertinent geologic information. Geologic information that should be considered includes groundwater and seepage conditions; lithology, stratigraphy, and geologic details disclosed by borings, "as-built" records, and geologic interpretation; maximum past overburden at site as deduced from geologic evidence; bedding, folding and faulting; joints and joint systems; weathering; slickensides, and field evidence relating to slides, faults, movements and earthquake activity. Foundations may present problems where they contain adversely oriented joints, slickensides or fissured material, faults, seams of soft materials, or weak layers. Such defects and excess pore water pressures may contribute to instability. Special tests may be necessary to determine physical properties of particular materials. The results of stability analyses afford a means of evaluating the structure's existing resistance to failure and also the effects of any proposed modifications. Results of stability analyses should be reviewed for compatibility with performance experience when possible.

4.4.2.1. *Seismic Stability.* The inertial forces for use in the conventional equivalent static force method of analysis should be obtained by multiplying the weight by the seismic coefficient and should be applied as a horizontal force at the center of gravity of the section or element. The seismic coefficients suggested for use with such analyses are listed in Figures 1 through 4. Seismic stability investigations for all high hazard category dams located in Seismic Zone 4 and high hazard dams of the hydraulic fill type in Zone 3 should include suitable dynamic procedures and analyses. Dynamic analyses for other dams and higher seismic coefficients are appropriate if in the judgment of the investigating engineer they are warranted because of proximity to active faults or other reasons. Seismic stability investigations should utilize "state-of-the-art" procedures involving seismological and geological studies to establish earthquake parameters for use in dynamic stability analyses and, where appropriate, the dynamic testing of materials. Stability analyses may be based upon either time-history or response spectra techniques. The results of dynamic analyses should be assessed on the basis of whether or not the dam would have sufficient residual integrity to retain the reservoir during and after the greatest or most adverse earthquake which might occur near the project location.

4.4.2.2. *Clay Shale Foundation.* Clay shale is a highly overconsolidated sedimentary rock comprised predominantly of clay minerals, with little or no cementation. Foundations of clay shales require special measures in stability investigations. Clay shales, particularly those containing montmorillonite, may be highly susceptible to expansion and

consequent loss of strength upon unloading. The shear strength and the resistance to deformation of clay shales may be quite low and high pore water pressures may develop under increase in load. The presence of slickensides in clay shales is usually an indication of low shear strength. Prediction of field behavior of clay shales should not be based solely on results of conventional laboratory tests since they may be misleading. The use of peak shear strengths for clay shales in stability analyses may be unconservative because of nonuniform stress distribution and possible progressive failures. Thus the available shear resistance may be less than if the peak shear strength were mobilized simultaneously along the entire failure surface. In such cases, either greater safety factors or residual shear strength should be used.

4.4.3. *Embankment Dams.*

4.4.3.1. *Liquefaction.* The phenomenon of liquefaction of loose, saturated sands and silts may occur when such materials are subjected to shear deformation or earthquake shocks. The possibility of liquefaction must presently be evaluated on the basis of empirical knowledge supplemented by special laboratory tests and engineering judgment. The possiblitity of liquefaction in sands diminishes as the relative density increases above approximately 70 percent. Hydraulic fill dams in Seismic Zones 3 and 4 should receive particular attention since such dams are susceptible to liquefaction under earthquake shocks.

4.4.3.2. *Shear Failure.* Shear failure is one in which a portion of an embankment or of an embankment and foundation moves by sliding or rotating relative to the remainder of the mass. It is conventionally represented as occurring along a surface and is so assumed in stability analyses, although shearing may occur in a zone of substantial thickness. The circular arc or the sliding wedge method of analyzing stability, as pertinent, should be used. The circular arc method is generally applicable to essentially homogeneous embankments and to soil foundations consisting of thick deposits of fine-grained soil containing no layers significantly weaker than other strata in the foundation. The wedge method is generally applicable to rockfill dams and to earth dams on foundations containing weak layers. Other methods of analysis such as those employing complex shear surfaces may be appropriate depending on the soil and rock in the dam and foundation. Such methods should be in reputable usage in the engineering profession.

4.4.3.3. *Loading Conditions.* The loading conditions for which the embankment structures should be investigated are (I) Sudden drawdown from spillway crest elevation or top of gates, (II) Partial pool, (III) Steady state seepage from spillway crest elevation or top of gate elevation, and (IV) Earthquake. Cases I and II apply to upstream slopes only; slopes; and Case IV applies to both upstream and downstream Case III applies to downstream slopes. A summary of suggested strengths and safety factors are shown in Table 4.

TABLE 4—FACTORS OF SAFETY [1]

Case and loading condition	Factor of safety	Shear [2] strength	Remarks
I Sudden drawdown from spillway crest or top of gates to minimum drawdown elevation.	[3]1.2	Minimum composite of R and S shear strengths. See Figure 5.	Within the drawdown zone submerged unit weights of materials are used for computing forces resisting sliding and saturated unit weights are used for computing forces contributing to sliding.
II Partial pool with assumed horizontal steady seepage saturation.	1.5	R+S/2 for R<S..... S for R>S.....	Composite intermediate envelope of R and S shear strengths. See Figure 6.
III Steady seepage from spillway crest or top of gates with $K_h/K_v=9$ assumed [4].	1.5	Same as Case II.....	
IV Earthquake (Cases II and III with seismic loading).	1.0	([5]).....	See Figures 1 through 4 for Seismic Coefficients.

[1] Not applicable to embankments on clay shale foundation. Experience has indicated special problems in determination of design shear strengths for clay shale foundations and acceptable safety factors should be compatible with the confidence level in shear strength assumptions.

[2] Other strength assumptions may be used if in common usage in the engineering profession.

[3] The safety factor should not be less than 1.5 when drawdown rate and pore water pressure developed from flow nets are used in stability analyses.

[4] K_h/K_v is the ratio of horizontal to vertical permeability. A minimum of 9 is suggested for use in compacted embankments and alluvial sediments.

[5] Use shear strength for case analyzed without earthquake. It is not necessary to analyze sudden drawdown for earthquake loading. Shear strength tests are classified according to the controlled drainage conditions maintained during the test. R tests are those in which specimen drainage is allowed during consolidation (or swelling) under initial stress conditions, but specimen drainage is not allowed during application of shearing stresses. S tests allow full drainage during initial stress application and shearing is at a slow rate so that complete specimen drainage is permitted during the complete test.

4.4.3.4. *Safety Factors.* Safety factors for embankment dam stability studies should be based on the ratio of available shear strength to developed shear strength, S_D:

$$S_D = \frac{C}{F.S.} + \frac{\sigma \tan \phi}{F.S.} \quad (1)$$

Where:

C = cohesion
ϕ = angle of internal friction
σ = normal stress

The factors of safety listed in Table 4 are recommended as minimum acceptable. Final accepted factors of safety should depend upon the degree of confidence the investigating engineer has in the engineering data available to him. The consequences of a failure with respect to human life and property damage are important considerations in establishing factors of safety for specific investigations.

4.4.3.5. *Seepage Failure.* A critical uncontrolled underseepage or through seepage condition that develops during a rising pool can quickly reduce a structure which was stable under previous conditions, to a total structural failure. The visually confirmed seepage conditions to be avoided are (1) the exit of the phreatic surface on the downstream slope of the dam and (2) development of hydrostatic heads sufficient to create in the area downstream of the dam sand boils that erode materials by the phenomenon known as "piping" and (3) localized concentrations of seepage along conduits or through pervious zones. The dams most susceptible to seepage problems are those built of or on pervious materials of uniform fine particle size, with no provisions for an internal drainage zone and/or no underseepage controls.

4.4.3.6. *Seepage Analyses.* Review and modifications to original seepage design analyses should consider conditions observed in the field inspection and piezometer instrumentation. A seepage analysis should consider the permeability ratios resulting from natural deposition and from compaction placement of materials with appropriate variation between horizontal and vertical permeability. An underseepage analysis of the embankment should provide a critical gradient factor of safety for the maximum head condition of not less than 1.5 in the area downstream of the embankment.

$$F.S = i_c/i = \frac{H_c/D_b}{H/D_b} = D_b \frac{(\gamma m - \gamma w)}{H \gamma w} \quad (2)$$

Where:

i_c = Critical gradient
i = Design gradient
H = Uplift head at downstream toe of dam measured above tailwater
H_c = The critical uplift
D_b = The thickness of the top impervious blanket at the downstream toe of the dam
γ_m = The estimated saturated unit weight of the material in the top impervious blanket
γ_w = The unit weight of water

Where a factor of safety less than 1.5 is obtained the provision of an underseepage control system is indicated. The factor of safety of 1.5 is a recommended minimum and may be adjusted by the responsible engineer based on the competence of the engineering data.

4.4.4. *Concrete Dams and Appurtenant Structures.*

4.4.4.1. *Requirements for Stability.* Concrete dams and structures appurtenant to embankment dams should be capable of resisting overturning, sliding and overstressing with adequate factors of safety for normal and maximum loading conditions.

4.4.4.2. *Loads.* Loadings to be considered in stability analyses include the water load on the upstream face of the dam; the weight of the structure; internal hydrostatic pressures (uplift) within the body of the dam, at the base of the dam and within the foundation; earth and silt loads; ice pressure, seismic and thermal loads, and other loads as applicable. Where tailwater or backwater exists on the downstream side of the structure it should be considered, and assumed uplift pressures should be compatible with drainage provisions and uplift measurements if available. Where applicable, ice pressure should be applied to the contact surface of the structure of normal pool elevation. A unit pressure of not more than 5,000 pounds per square foot should be used. Normally, ice thickness should not be assumed greater than two feet. Earthquake forces should consist of the inertial forces due to the horizontal acceleration of the dam itself and hydrodynamic forces resulting from the reaction of the reservoir water against the structure. Dynamic water pressures for use in a conventional methods of analysis may be computed by means of the "Westergaard Formula" using the parabolic approximation (H.M. Westergaard, "Water Pressures on Dams During Earthquakes," Trans., ASCE, Vol 98, 1933, pages 418–433), or similar method.

4.4.4.3. *Stresses.* The analysis of concrete stresses should be based on in situ properties of the concrete and foundation. Computed maximum compressive stresses for normal operating conditions in the order of ¾ or less of in situ strengths should be satis-

factory. Tensile stresses in unreinforced concrete should be acceptable only in locations where cracks will not adversely affect the overall performance and stability of the structure. Foundation stresses should be such as to provide adequate safety against failure of the foundation material under all loading conditions.

4.4.4.4. *Overturning.* A gravity structure should be capable of resisting all overturning forces. It can be considered safe against overturning if the resultant of all combinations of horizontal and vertical forces, excluding earthquake forces, acting above any horizontal plane through the structure or at its base is located within the middle third of the section. When earthquake is included the resultant should fall within the limits of the plane or base, and foundation pressures must be acceptable. When these requirements for location of the resultant are not satisfied the investigating engineer should assess the importance to stability of the deviations.

4.4.4.5. *Sliding.* Sliding of concrete gravity structures and of abutment and foundation rock masses for all types of concrete dams should be evaluated by the shear-friction resistance concept. The available sliding resistance is compared with the driving force which tends to induce sliding to arrive at a sliding stability safety factor. The investigation should be made along all potential sliding paths. The critical path is that plane or combination of planes which offers the least resistance.

4.4.4.5.1. *Sliding Resistance.* Sliding resistance is a function of the unit shearing strength at no normal load (cohesion) and the angle of friction on a potential failure surface. It is determined by computing the maximum horizontal driving force which could be resisted along the sliding path under investigation. The following general formula is obtained from the principles of statics and may be derived by resolving forces parallel and perpendicular to the sliding plane:

$$R_s = V \tan(\phi + \alpha) + \frac{cA}{\cos\alpha(1 - \tan\phi \tan\alpha)} \quad (3)$$

Where:

R_s = Sliding Resistance (maximum horizontal driving force which can be resisted by the critical path)

ϕ = Angle of internal friction of foundation material or, where applicable, angle of sliding friction

V = Summation of vertical forces (including uplift)

c = Unit shearing strength at zero normal loading along potential failure plane

A = Area of potential failure plane developing unit shear strength "c"

α = Angle between inclined plane and horizontal (positive for uphill sliding)

For sliding downhill the angle α is negative and Equation (1) becomes:

$$R_s = V \tan(\phi - \alpha) + \frac{cA}{\cos\alpha(1 + \tan\phi \tan\alpha)} \quad (4)$$

When the plane of investigation is horizontal, and the angle α is zero and Equation (1) reduced to the following:

$$R_s = V \tan\phi + cA \quad (5)$$

4.4.4.5.2. *Downstream Resistance.* When the base of a concrete structure is embedded in rock or the potential failure plane lies below the base, the passive resistance of the downstream layer of rock may sometimes be utilized for sliding resistance. Rock that may be subjected to high velocity water scouring should not be used. The magnitude of the downstream resistance is the lesser of (a) the shearing resistance along the continuation of the potential sliding plane until it daylights or (b) the resistance available from the downstream rock wedge along an inclined plane. The theoretical resistance offered by the passive wedge can be computed by a formula equivalent to formula (3):

$$P_p = W \tan(\phi + \alpha) \frac{cA}{\cos\alpha(1 - \tan\phi \tan\alpha)} \quad (6)$$

Where:

P_p = Passive resistance of rock wedge

W = weight (buoyant weight if applicable) of downstream rock wedge above inclined plane of resistance, plus any superimposed loads

ϕ = angle of internal friction or, if applicable, angle of sliding friction

α = angle between inclined failure plane and horizontal

c = unit shearing strength at zero normal load along failure plane

A = area of inclined plane of resistance

When considering cross-bed shear through a relatively shallow, competent rock strut, without adverse jointing or faulting, W and α may be taken at zero and 45°, respectively, and an estimate of passive wedge resistance per unit width obtained by the following equation:

$$P_p = 2\,cD \quad (7)$$

Where:

D=Thickness of the rock strut

4.4.4.5.3. *Safety Factor.* The shear-friction safety factor is obtained by dividing the resistance R_R by H, the summation of horizontal service loads to be applied to the structure:

$$S_{s-f}=\frac{R_R}{H} \quad (8)$$

When the downstream passive wedge contributes to the sliding resistance, the shear friction safety factor formula becomes:

$$S_{s-f}=\frac{R_R+P_p}{H} \quad (9)$$

The above direct superimposition of passive wedge resistance is valid only if shearing rigidities of the foundation components are similar. Also, the compressive strength and buckling resistance of the downstream rock layer must be sufficient to develop the wedge resistance. For example, a foundation with closely spaced, near horizontal, relatively weak seams might not contain sufficient buckling strength to develop the magnitude of wedge resistance computed from the cross-bed shear strength. In this case wedge resistance should not be assumed without resorting to special treatment (such as installing foundation anchors). Computed sliding safety factors approximating 3 or more for all loading conditions without earthquake, and 1.5 including earthquake, should indicate satisfactory stability, depending upon the reliability of the strength parameters used in the analyses. In some cases when the results of comprehensive foundation studies are available, smaller safety factors may be acceptable. The selection of shear strength parameters should be fully substantiated. The bases for any assumptions; the results of applicable testing, studies and investigations; and all pre-existing, pertinent data should be reported and evaluated.

Chapter 5—Reports

5.1. *General.* This chapter outlines the procedures for reporting the results of the technical investigations. Hazardous conditions should be reported immediately upon detection to the owner of the dam, the Governor of the State in which the dam is located and the appropriate regulatory agency without delay for preparation of the formal report.

5.2. *Preparation of Report.* A formal report should be prepared for each dam investigated for submission to the regulatory agency and the owner of the dam. Each report should contain the information indicated in the following paragraphs. The signature and registration identification of the professional engineer who directed the investigation and who was responsible for evaluation of the dam should be included in the report.

5.2.1. *Phase I Reports.* Phase I reports should contain the following information:

5.2.1.1. Description of dam including regional vicinity map showing location and plans, elevations and sections showing the essential project features and the size and hazard potential classifications.

5.2.1.2. Summary of existing engineering data, including geologic maps and information.

5.2.1.3. Results of the visual inspection of each project feature including photographs and drawings to minimize descriptions.

5.2.1.4. Evaluation of operational adequacy of the reservoir regulation plan and maintenance of the dam and operating facilities and features that pertain to the safety of the dam.

5.2.1.5. Description of any warning system in effect.

5.2.1.6. Evaluation of the hydraulic and hydrologic assumptions and structural stability.

5.2.1.7. An assessment of the general condition of the dam with respect to safety based upon the findings of the visual inspection and review of engineering data. Where data on the original design indicate significant departure from or non-conformance with guidelines contained herein, the engineer-in-charge of the investigation will give his opinion of the significance, with regard to safety, of such factors. Any additional studies, investigations and analyses considered essential to assessment of the safety of the dam should be listed, together with an opinion about the urgency of such additional work.

5.2.1.8. Indicate alternative possible remedial measures or revisions in operating and maintenance procedures which may (subject to further evaluation) correct deficiencies and hazardous conditions found during the investigation.

5.2.2. *Phase II Reports.* Phase II reports should describe the detailed investigations and should supplement Phase I reports. They should contain the following information:

5.2.2.1. Summary of additional engineering data obtained to determine the hydraulic and hydrologic capabilities and/or structural stability.

5.2.2.2. Results of all additional studies, investigations, and analyses performed.

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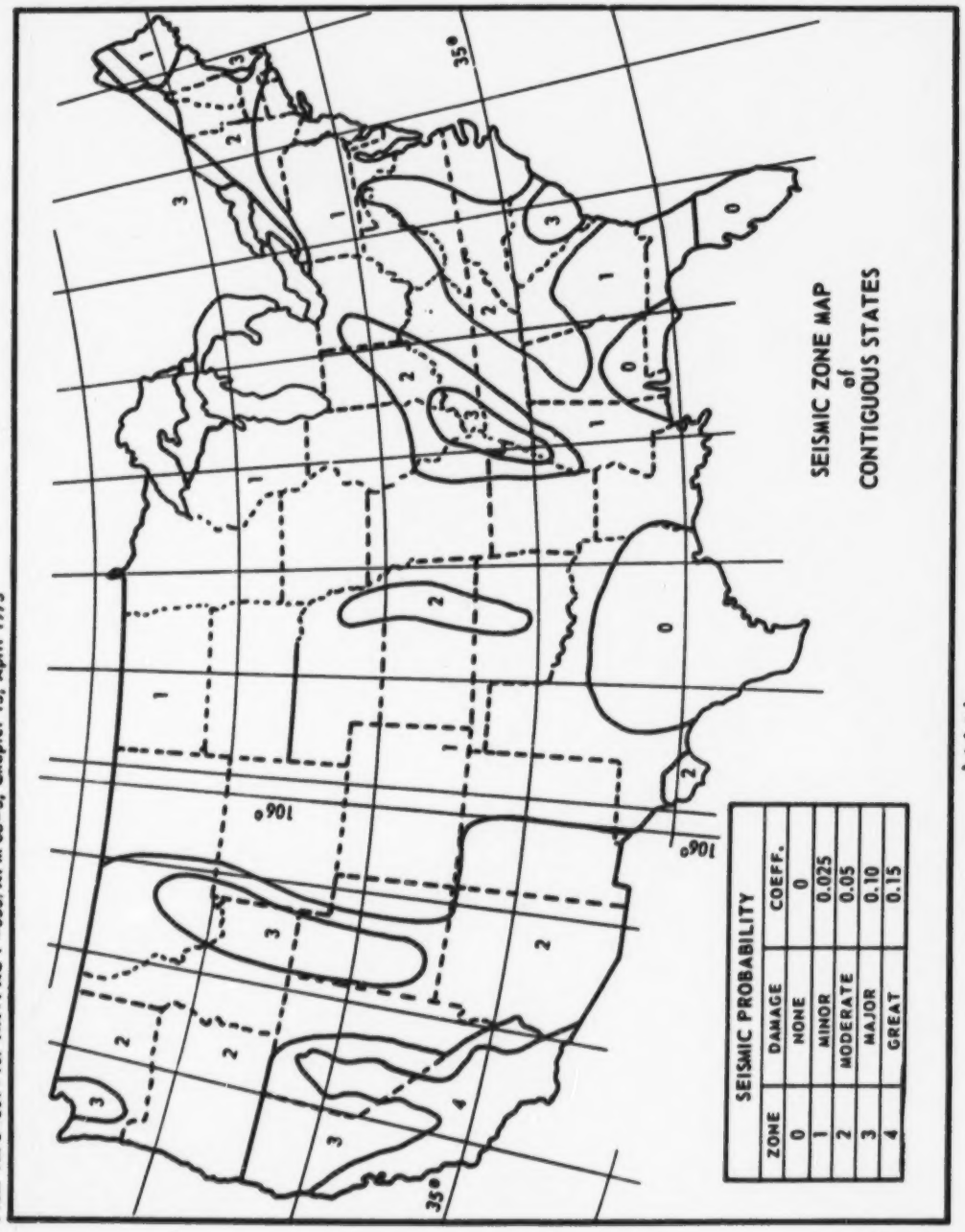
5.2.2.3. Technical assessment of dam safety including deficiences and hazardous conditions found to exist.

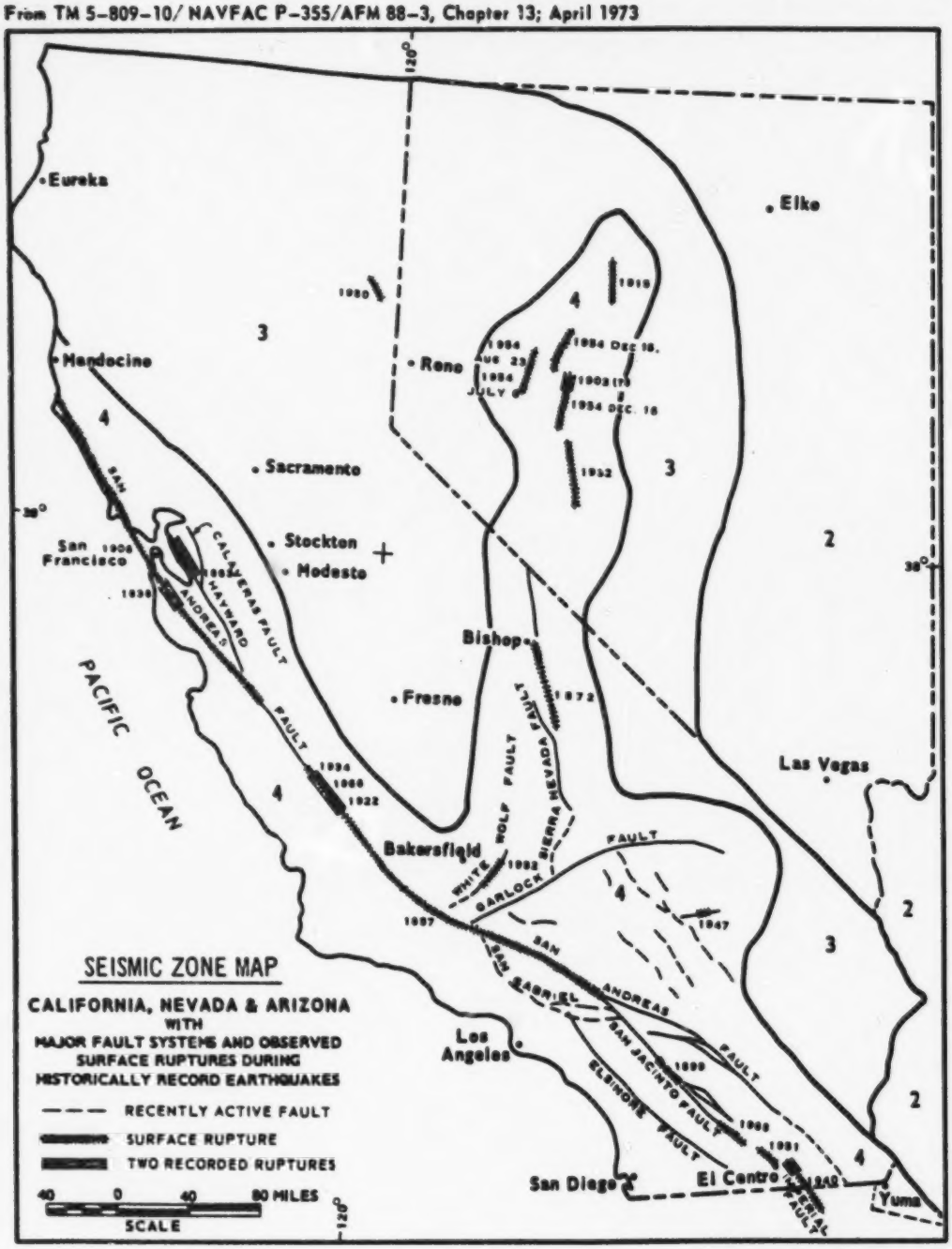
5.2.2.4. Indicate alternative possible remedial measures or revision in maintenance and operating procedures which may (subject to further evaluation) correct deficiencies and hazardous conditions found during the investigation.



From TM 5-809-10/ NAVFAC P-355/AFM 88-3, Chapter 13; April 1973

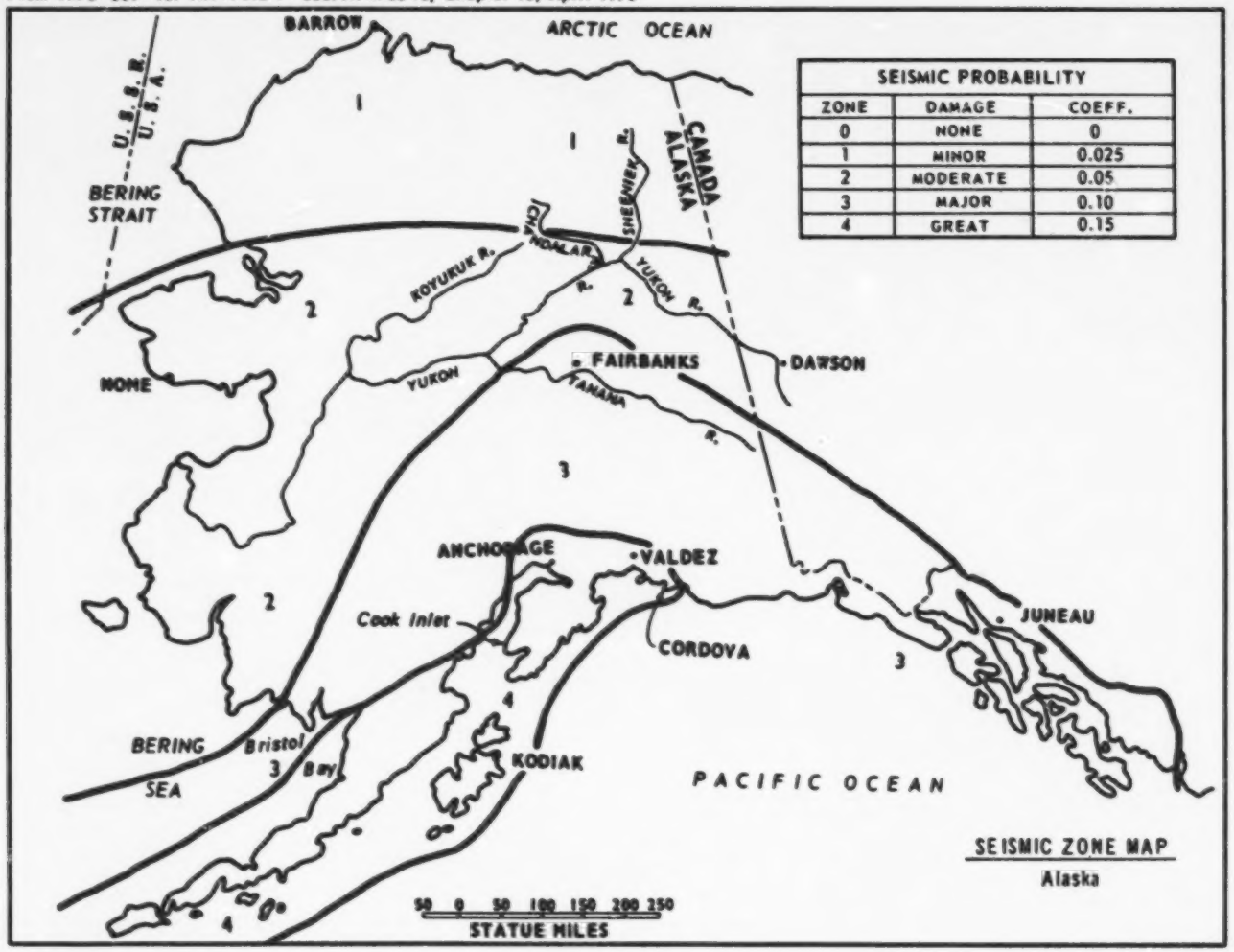
Figure 1

From TM 5-809-10/ NAVFAC P-355/AFM 88-3, Chapter 13; April 1973



Appendix D, Figure 2

From TM 5-809-10/ NAVFAC P-355/AFM 88-3, Chapter 13; April 1973



SEISMIC PROBABILITY		
ZONE	DAMAGE	COEFF.
0	NONE	0
1	MINOR	0.025
2	MODERATE	0.05
3	MAJOR	0.10
4	GREAT	0.15

Figure 3

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From TM 5-809-10.' NAVFAC P-355.'AFM 88-3, Chapter 13; April 1973

SEISMIC PROBABILITY		
ZONE	DAMAGE	COEFF.
0	NONE	0
1	MINOR	0.025
2	MODERATE	0.05
3	MAJOR	0.10
4	GREAT	0.15

SEISMIC ZONE MAP

Hawaii

Figure 4

444

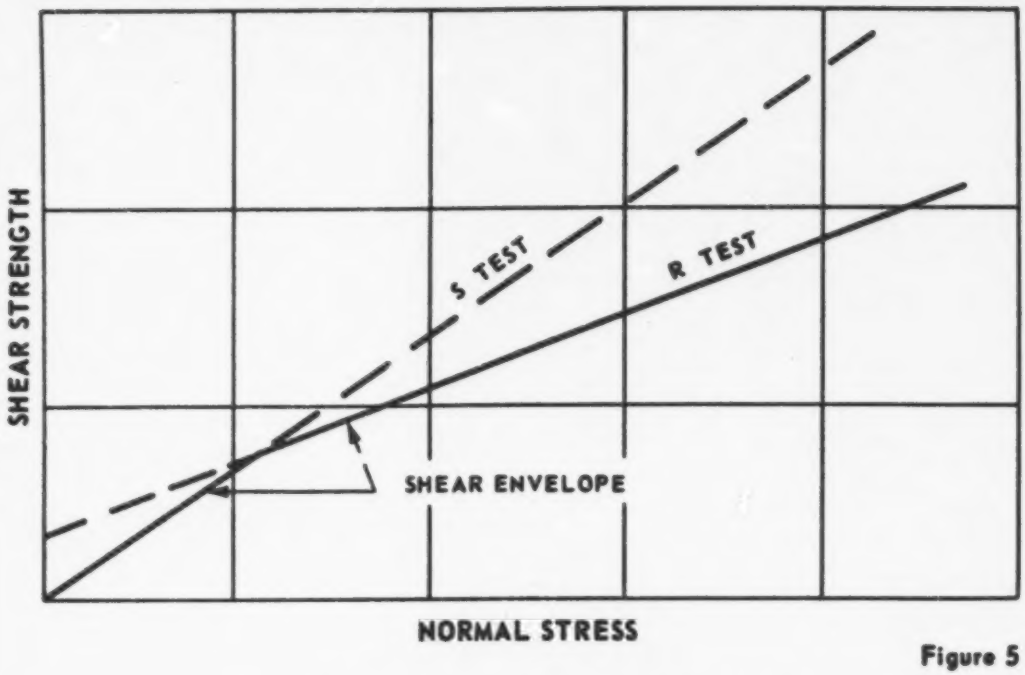

Figure 5

SHEAR ENVELOPE FOR CASE I

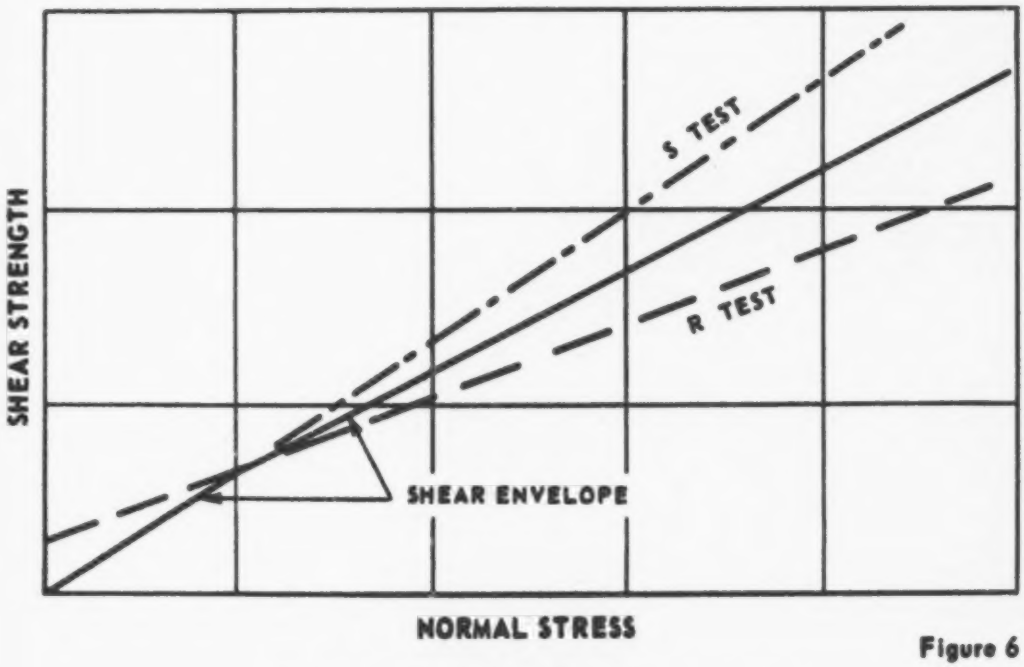

Figure 6

SHEAR ENVELOPE FOR CASES II AND III

APPENDIX I TO APP. D—ENGINEERING DATA

This appendix lists engineering data which should be collected from project records and, to the extent available, included in the Phase I investigation report. The list is intended to serve as a checklist and not to establish rigid data requirements. Such a compilation should also facilitate future inspections and investigations. Only data readily available will be included in Phase I reports, but data lacking and deemed necessary for an adequate safety evaluation should be identified.

1. *General Project Data*

a. *Regional Vicinity Map* showing the location of the dam, the upstream drainage area and the downstream area subject to potential damage due to failure of the dam and misoperation or failure of the operating equipment.

b. *As-Built Drawings* indicating plans, elevations and sections of the dam and appurtenant structures including the details of the discharge facilities such as outlet works, limited service and emergency spillways, flashboards, fuse plugs and operating equipment.

2. *Hydrologic and Hydraulic Data* including the following:

a. Drainage area and basin runoff characteristics (indicating pending changes).

b. Elevation of top of conservation pool or normal upper retention water surface elevation, as applicable (base level of any flood impoundment).

c. Storage capacity including dead or inactive storage, corresponding to top of conservation or normal upper retention level (cumulative, excluding flood control and surcharge storage).

d. Elevation of the top of flood control pool.

e. Storage capacity of flood control zone (incremental).

f. Elevation of maximum design pool (corresponding to top of surcharge storage or spillway design flood).

g. Storage capacity of surcharge zone (incremental, above top of flood control pool or, above normal upper retention level if flood control space not provided).

h. Height of freeboard (distance between maximum design flood water surface and top of dam).

i. Elevation of top of dam (lowest point of embankment or non-overflow structure).

j. Elevation of crest, type, width, crest length and location of spillways (number, size and type of gates if controlled).

k. Type, location, entrance and exit inverts of outlet works and emergency drawdown facilities (number, size and shape of conduits and gates, including penstocks and sluices).

l. Location, crest elevation, description of invert and abutments (concrete, rock, grass, earth) and length of limited service and emergency spillways.

m. Location and dscription of flashboards and fuse plugs, including hydraulic head (pool elevation) and other conditions required for breaching, along with the assumed results of breaching.

n. Location and top elevation of dikes and floodwalls (overflow and non-overflow) affected by reservoir. Include information on low reaches of reservoir rim.

o. Type, location, observations and records of hydrometeorological gages appurtenant to the project.

p. Maximum non-damaging discharge, or negligible damage rate, at potential damage locations downstream.

3. *Foundation Data and Geological Features* including logs of borings, geological maps, profiles and cross sections, and reports of foundation treatment.

4. *Properties of Embankments and Foundation Materials* including results of laboratory tests, field permeability tests, construction control tests, and assumed design properties for materials.

5. *Concrete Properties* including the source and type of aggregate, cement used, mix design data and the results of testing during construction.

6. *Electrical and Mechanical Equipment* type and rating of normal and emergency power supplies, hoists, cranes, valves and valve operator, control and alarm systems and other electrical and mechanical equipment and systems that could affect the safe operation of the dam.

7. *Construction History* including diversion scheme, construction sequence, pertinent construction problems, alterations, modifications and maintenance repairs.

8. Water Control Plan including regulation plan under normal conditions and during flood events or other emergency conditions. The availability of dam tenders, means of communication between dam tenders and authority supervising water control, and method of gate operation (manual, automatic, or remote control) should be included. Flood warning systems should be described in sufficient detail to enable assessment of their reduction in the flood hazard potential.

9. *Operation Record.*

a. Summary of past major flood events including any experiences that presented a serious threat to the safety of the project or to human life or property. The critical project feature, date and duration of event, causative factor, peak inflow and outflow, maximum elevation of water surface, wind and wave factors if significant, issuance of alert or evacuation warnings and adequacy of project feature involved should be included in the summary of past experience of serious threat to the safety of the project.

b. Records of performance observations including instrumentation records.

c. List of any known deficiencies that pose a threat to the safety of the dam or to human life or property.

d. History of previous failures or deficiencies and pending remedial measures for correcting known deficiencies and the schedule for accomplishing remedial measures should be indicated.

10. *Earthquake History* including a summary of the seismic data of significant recorded earthquakes in the vicinity of the dam and information on major damage in the vicinity of the dam from both recorded and unrecorded earthquakes. Regional geologic maps and other documents showing fault locations should be collected.

11. *Inspection History* including the results of the last safety inspection, the organization that performed the inspection, the date inspection performed and the authority for conducting the inspection.

12. *Principal Design Assumptions and Analyses.*

a. *Hydrologic and Hydraulic Determinations.*

(1) Quantity, time and area distribution, and reference source of depth-area-duration data of spillway design storm precipitation (point precipitation if applicable).

(2) Maximum design flood inflow hydrograph including loss rates (initial and average for design flood conditions) and time of runoff concentration of reservior watershed (peak inflow only when applicable).

(3) Maximum design flood outflow hydrograph (maximum outflow only when applicable).

(4) Discharge-frequency relationship, preferably at damsite, including estimated frequency of spillway design flood for small dams, when appropriate.

(5) Reservior area and storage capacity versus water surface elevation (table or curves).

(6) Rating curves (free flow and partial gate openings) for all discharge facilities contributing to the maximum design flood outflow hydrograph. Also a composite-rating of all contributing facilities, if appropriate.

(7) Tailwater rating curve immediately below damsite including elevation corresponding to maximum design flood discharge and approximate nondamaging channel capacity.

(8) Hydrologic map of watershed above damsite including reservior area, watercourse, elevation contours, and principal stream-flow and precipitation gaging stations.

b. *Stability and Stress Analysis* of the dam, spillway and appurtenant structures and features including the assumed properties of materials and all pertinent applied loads.

c. *Seepage and Settlement Analyses.* The determination of distribution, direction and magnitude of seepage forces and the design and construction measures for their control. Settlement estimates and steps adopted to compensate for total settlement and to minimize differential settlements.

Appendix II to App. D—Inspection Items

This appendix provides guidance for performing field inspections and may serve as the basis for developing a detailed checklist for each dam.

1. *Concrete Structures in General.*

a. *Concrete Surfaces.* The condition of the concrete surfaces should be examined to evaluate the deterioration and continuing serviceability of the concrete. Descriptions of concrete conditions should conform with the appendix to "Guide for Making a Condition Survey of Concrete in Service," American Concrete Institute (ACI) Journal, Proceedings Vol. 65, No. 11, November 1968, page 905-918.

b. *Structural Cracking.* Concrete structures should be examined for structural cracking resulting from overstress due to applied loads, shrinkage and temperature effects or differential movements.

c. *Movement—Horizontal and Vertical Alignment.* Concrete structures should be examined for evidence of any abnormal settlements, heaving, deflections, or lateral movements.

d. *Junctions.* The conditions at the junctions of the structure with abutments or embankments should be determined.

e. *Drains—Foundation, Joint, Face.* All drains should be examined to determine that they are capable of performing their design function.

f. *Water Passages.* All water passages and other concrete surfaces subject to running water should be examined for erosion, cavitation, obstructions, leakage or significant structural cracks.

g. *Seepage or Leakage.* The faces, abutments and toes of the concrete structures should be examined for evidence of seepage or abnormal leakage, and records of flow of downstream springs reviewed for variation with reservoir pool level. The sources of seepage should be determined if possible.

h. *Monolith Joints—Construction Joints.* All monolith and construction joints should be examined to determine the condition of the joint and filler material, any movement of joints, or any indication of distress or leakage.

i. *Foundation.* Foundation should be examined for damage or possible undermining of the downstream toe.

j. *Abutments.* The abutments should be examined for sign of instability or excessive weathering.

2. *Embankment Structures.*

a. *Settlement.* The embankments and downstream toe areas should be examined for any evidence of localized or overall settlement, depressions or sink holes.

b. *Slope Stability.* Embankment slopes should be examined for irregularities in alignment and variances from smooth uniform slopes, unusual changes from original crest alignment and elevation, evidence of movement at or beyond the toe, and surface cracks which indicate movement.

c. *Seepage.* The downstream face of abutments, embankment slopes and toes, embankment—structure contacts, and the downstream valley areas should be examined for evidence of existing or past seepage. The sources of seepage should be investigated to determine cause and potential severity to dam safety under all operating conditions. The presence of animal burrows and tree growth on slopes which might cause detrimental seepage should be examined.

d. *Drainage Systems.* All drainage systems should be examined to determine whether the systems can freely pass discharge and that the discharge water is not carrying embankment or foundation material. Systems used to monitor drainage should be examined to assure they are operational and functioning properly.

e. *Slope Protection.* The slope protection should be examined for erosion-formed gullies and wave-formed notches and benches that have reduced the embankment cross-section or exposed less wave resistant materials. The adequacy of slope protection against waves, currents, and surface runoff that may occur at the site should be evaluated. The condition of vegetative cover should be evaluated where pertinent.

3. *Spillway Structures.* Examination should be made of the structures and features including bulkheads, flashboards, and fuse plugs of all service and auxiliary spillways which serve as principal or emergency spillways for any condition which may impose operational constraints on the functioning of the spillway.

a. *Control Gates and Operating Machinery.* The structural members, connections, hoists, cables and operating machinery and the adequacy of normal and emergency power supplies should be examined and tested to determine the structural integrity and verify the operational adequacy of the equipment. Where cranes are intended to be used for handling gates and bulkheads, the availability, capacity and condition of the cranes and lifting beams should be investigated. Operation of control systems and protective and alarm devices such as limit switches, sump high water alarms and drainage pumps should be investigated.

b. *Unlined Saddle Spillways.* Unlined saddle spillways should be examined for evidence of erosion and any conditions which may impose constraints on the functioning of the spillway. The ability of the spillway to resist erosion due to operation and the potential hazard to the safety of the dam from such operation should be determined.

c. *Approach and Outlet Channels.* The approach and outlet channels should be examined for any conditions which may impose constraints on the functioning of the spillway and present a potential hazard to the safety of the dam.

d. *Stilling Basin (Energy Dissipators).* Stilling basins including baffles, flip buckets or other energy dissipators should be examined for any conditions which may pose constraints on the ability of the stilling basin to prevent downstream scour or erosion which may create or present a potential hazard to the safety of the dam. The existing condition of the channel downstream of the stilling basin should be determined.

4. *Outlet Works.* The outlet works examination should include all structures and features designed to release reservoir water below the spillway crest through or around the dam.

a. *Intake Structure.* The structure and all features should be examined for any conditions which may impose operational constraints on the outlet works. Entrances to intake structure should be examined for conditions such as silt or debris accumulation which may reduce the discharge capabilities of the outlet works.

b. *Operating and Emergency Control Gates.* The structural members, connections, guides, hoists, cables and operating machinery including the adequacy of normal and emergency power supplies should be examined and tested to determine the structural integrity and verify the operational adequacy of the operating and emergency gates, valves, bulkheads, and other equipment.

c. *Conduits, Sluices, Water Passages, Etc.* The interior surfaces of conduits should be examined for erosion, corrosion, cavitation, cracks, joint separation and leakage at cracks or joints.

d. *Stilling Basin (Energy Dissipator).* The stilling basin or other energy dissipator should be examined for conditions which may impose any constraints on the ability of the stilling basin to prevent downstream scour or erosion which may create or present a potential hazard to the safety of the dam. The existing condition of the channel downstream of the stilling basin should be determined by soundings.

e. *Approach and Outlet Channels.* The approach and outlet channels should be examined for any conditions which may impose constraints on the functioning of the discharge facilities of the outlet works, or present a hazard to the safety of the dam.

f. *Drawdown Facilities.* Facilities provided for drawdown of the reservoir to avert impending failure of the dam or to facilitate repairs in the event of stability or foundation problems should be examined for any conditions which may impose constraints on their functioning as planned.

5. *Safety and Performance Instrumentation.* Instruments which have been installed to measure behavior of the structures should be examined for proper functioning. The available records and readings of installed instruments should be reviewed to detect any unusual performance of the instruments or evidence of unusual performance or distress of the structure. The adequacy of the installed instrumentation to measure the performance and safety of the dam should be determined.

a. *Headwater and Tailwater Gages.* The existing records of the headwater and tailwater gages should be examined to determine the relationship between other instrumentation measurements such as stream flow, uplift pressures, alignment, and drainage system discharge with the upper and lower water surface elevations.

b. *Horizontal and Vertical Alignment Instrumentation (Concrete Structures).* The existing records of alignment and elevation surveys and measurements from inclinometers, inverted plumb bobs, gage points across cracks and joints, or other devices should be examined to determine any change from the original position of the structures.

c. *Horizontal and Vertical Movement, Consolidation, and Pore-Water Pressure Instrumentation (Embankment Structures).* The existing records of measurements from settlement plates or gages, surface reference marks, slope indicators and other devices should be examined to determine the movement history of the embankment. Existing piezometer measurements should be examined to determine if the pore-water pressures in the embankment and foundation would under given conditions impair the safety of the dam.

d. *Uplift Instrumentation.* The existing records of uplift measurements should be examined to determine if the uplift pressures for the maximum pool would impair the safety of the dam.

e. *Drainage System Instrumentation.* The existing records of measurements of the drainage system flow should be examined to establish the normal relationship between pool elevations and discharge quantities and any changes that have occurred in this relationship during the history of the project.

f. *Seismic Instrumentation.* The existing records of seismic instrumentation should be examined to determine the seismic activity in the area and the response of the structures of past earthquakes.

6. *Reservoir.* The following features of the reservoir should be examined to determine to what extent the water impounded by the dam would constitute a danger to the safety of the dam or a hazard to human life or property.

a. *Shore line.* The land forms around the reservoir should be examined for indications of major active or inactive landslide areas and to determine susceptibility of bedrock stratigraphy to massive landslides of sufficient magnitude to significantly reduce reservoir capacity or create waves that might overtop the dam.

b. *Sedimentation.* The reservoir and drainage area should be examined for excessive sedimentation or recent developments in the drainage basin which could cause a sudden increase in sediment load thereby reducing the reservoir capacity with attendant increase in maximum outflow and maximum pool elevation.

c. *Potential Upstream Hazard Areas.* The reservoir area should be examined for features subject to potential backwater flooding resulting in loss of human life or property at reservoir levels up to the maximum water storage capacity including any surcharge storage.

d. *Watershed Runoff Potential.* The drainage basin should be examined for any extensive alterations to the surface of the drainage basin such as changed agriculture practices, timber clearing, railroad or highway construction or real estate developments that might extensively affect the runoff characteristics. Upstream projects that could have impact on the safety of the dam should be identified.

7. *Downstream Channel.* The channel immediately downstream of the dam should be examined for conditions which might impose any constraints on the operation of the dam or present any hazards to the safety of the dam. Development of the potential flooded area downstream of the dam should be assessed for compatibility with the hazard classification.

8. *Operation and Maintenance Features.*

a. *Reservoir Regulation Plan.* The actual practices in regulating the reservoir and discharges under normal and emergency conditions should be examined to determine if they comply with the designed reservoir regulation plan and to assure that they do not constitute a danger to the safety of the dam or to human life or property.

b. *Maintenance.* The maintenance of the operating facilities and features that pertain to the safety of the dam should be examined to determine the adequacy and quality of the maintenance procedures followed in maintaining the dam and facilities in safe operating condition.

Public Law 92-367
92nd Congress, H. R. 15951
August 8, 1972

An Act

To authorize the Secretary of the Army to undertake a national program of inspection of dams.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "dam" as used in this Act means any artificial barrier, including appurtenant works, which impounds or diverts water, and which (1) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation or (2) has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. This Act does not apply to any such barrier which is not in excess of six feet in height, regardless of storage capacity or which has a storage capacity at maximum water storage elevation not in excess of fifteen acre-feet, regardless of height.

National dam inspection program. "Dam."

Sec. 2. As soon as practicable, the Secretary of the Army, acting through the Chief of Engineers, shall carry out a national program of inspection of dams for the purpose of protecting human life and property. All dams in the United States shall be inspected by the Secretary except (1) dams under the jurisdiction of the Bureau of Reclamation, the Tennessee Valley Authority, or the International Boundary and Water Commission, (2) dams which have been constructed pursuant to licenses issued under the authority of the Federal Power Act, (3) dams which have been inspected within the twelve-month period immediately prior to the enactment of this Act by a State agency and which the Governor of such State requests be excluded from inspection, and (4) dams which the Secretary of the Army determines do not pose any threat to human life or property. The Secretary may inspect dams which have been licensed under the Federal Power Act upon request of the Federal Power Commission and dams under the jurisdiction of the International Boundary and Water Commission upon request of such Commission.

Army, authorization.

Exceptions.

41 Stat. 1063; 49 Stat. 863. 16 USC 791a.

86 STAT. 506
86 STAT. 507

Sec. 3. As soon as practicable after inspection of a dam, the Secretary shall notify the Governor of the State in which such dam is located the results of such investigation. The Secretary shall immediately notify the Governor of any hazardous conditions found during an inspection. The Secretary shall provide advice to the Governor, upon request, relating to timely remedial measures necessary to mitigate or obviate any hazardous conditions found during an inspection.

Notice to Governors.

Sec. 4. For the purpose of determining whether a dam (including the waters impounded by such dam) constitutes a danger to human life or property, the Secretary shall take into consideration the possibility that the dam might be endangered by overtopping, seepage, settlement, erosion, sediment, cracking, earth movement, earthquakes, failure of bulkheads, flashboard, gates on conduits, or other conditions which exist or which might occur in any area in the vicinity of the dam.

Sec. 5. The Secretary shall report to the Congress on or before July 1, 1974, on his activities under the Act, which report shall include, but not be limited to—

Report to Congress.

(1) an inventory of all dams located in the United States;

(2) a review of each inspection made, the recommendations furnished to the Governor of the State in which such dam is located and information as to the implementation of such recommendation;

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(3) recommendations for a comprehensive national program for the inspection, and regulation for safety purpose of dams of the Nation, and the respective responsibilities which should be assumed by Federal, State, and local governments and by public and private interests.

Liability.

SEC. 6. Nothing contained in this Act and no action or failure to act under this Act shall be construed (1) to create any liability in the United States or its officers or employees for the recovery of damages caused by such action or failure to act; or (2) to relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Approved August 8, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 92-1232 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 118 (1972):
July 24, considered and passed House.
July 25, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 33:
Aug. 9, Presidential statement.

Appendix E—Suggested Outline

Inspection Report—National Dam Inspection Program (RCS-DAEN-CWE-17 and OMB No. 49-R0421)

Title Sheet

Name of Dam
ID Number from Inventory
State, County and River or Stream where dam is located
Owner
Size and Hazard Classification
Names of Inspectors
Names of Review Board
Approval Signature of District Engineer

Table of Contents

General Assessment

Give brief assessment of general condition of dam with respect to safety, including a listing of deficiencies, and recommendations indicating degree of urgency.

1. Introduction

a. Authority
b. Purpose and Scope of Inspection

2. Project Information

a. Site Information
b. Description of Structures—Dam, Outlet, Spillway and other principal features.
c. Purpose of Dam
d. Design, Construction and Operating History

3. Field Inspection

Briefly describe physical condition of the dam and appurtenant structures as they were observed during the field inspection. (If field inspection form is appended, only present summary.) Describe operational procedures, including any warning system, condition of operating equipment, and provision for emergency procedures. Describe any pertinent observations of the reservoir area and downstream channel adjacent to dam.

4. Evaluation

a. Structural and Geotechnical
(1) General
(2) Embankment and/or Foundation Condition
(3) Stability—Briefly discuss pertinent information such as design, construction and operating records. Assess stability under maximum loading on basis of the record data, together with observations of field inspection and results of any additional, brief calculations performed by inspectors. If additional, detailed stability analyses are considered necessary, recommend that the owner engage a qualified engineer or firm to provide the analysis.

b. Hydrologic and Hydraulic

(1) Spillway Adequacy—Briefly describe pertinent record information such as hydrologic and hydraulic design data, flood of record, and previous analyses. Describe any hydraulic and hydrologic analyses made for this inspection. Present conclusion with respect to adequacy of spillway to pass the recommended spillway design flood without overtopping dam. If overtopping would occur, and if available from the type of analysis used, give maximum depth over top of dam and duration of overtopping, assuming the dam does not fail. Also indicate the largest flood, as a percentage of the probable maximum flood which can be passed without overtopping.

(2) Effects of overtopping—If dam is overtopped by the recommended spillway design flood, provide assessment as to whether or not dam would likely fail, and if, in case of failure, the hazard to loss of life downstream of the dam would be substantially increased over that which would exist without failure. If information upon which to base a reasonable assessment is insufficient, so state and describe the needed data, and recommend that the necessary studies be performed by engineers engaged by the owner.

c. Operation and Maintenance

Assess operating equipment and procedures, emergency power for gate operation, and Emergency Action Plan. Assess quality of maintenance as it pertains to dam safety.

5. Conclusions

Provide conclusions on condition of dam and list all deficiencies. If dam is considered unsafe, so state and give reason.

6. Recommendations

List all recommended actions, including additional studies, installation of new surveillance procedures and devices, development of Emergency Action Plans, and remedial work. Recommend that a qualified engineering firm be retained to accomplish any recommended additional investigations and studies and also to design and supervise remedial works.

Appendixes

a. Inspection Checklist (if available)
b. Other Illustrations as follows:

(1) Include a map showing location of the dam. Usually a portion of a USGS quadrangle sheet can be used which will show the topography of the area, location of the dam, exent of the lake and drainage basin, and perhaps indicate the downstream development.

(2) If available, include a plan and section of the dam.

(3) General photographs of the dam and downstream channel should be included.

(4) Color photographs of deficiencies should be included. These should be held to the minimum required to illustrate the deficiencies.

(5) Available engineering data including Hydrologic/Hydraulic calculation and physical test results that might be available.

APPENDIX F

Instructions for Unsafe Dam Data Sheet (RCS-DAEN-CWE-17 and OMB No. 49-R0421)

The indicated information shall be provided in the format shown on Pg F-3 for each dam assessed to be unsafe during the reporting period. A separate data sheet should be provided for each unsafe dam. The information supplied should conform to the following.

a. *Name*—Name of dam.

b. *Id. No.*—Dam inventory identity number.

c. *Location*—List state county, river or stream and nearest D/S city or town where the dam is located.

d. *Height*—Maximum hydraulic height of dam.

e. *Maximum Impoundment Capacity*—List the capacity of the reservior at maximum attainable water surface elevation including any surcharge loading.

f. *Type*—Type of dam, i.e., earth, rockfill, gravity, combination earth-gravity, etc.

g. *Owner*—Owner of dam.

h. *Date Governor Notified of Unsafe Condition*—The date and method of notification, such as, by telegram, letter, report, etc.

i. *Condition of Dam Resulting in Unsafe Assessment*—Brief description of the deficiencies discovered which resulted in the unsafe assessment.

j. *Description of Danger Involved*—Downstream (D/S) hazard potential category and a brief description of the danger involved.

k. *Recommendations Given to Governor*—Brief description of the actions recommended to Governor at time of notification of unsafe condition to eliminate or reduce the danger.

l. *Urgency Category*—State whether the unsafe condition of the dam is an emergency or non-emergency situation. An emergency situation should be considered to exist if the failure of the dam is judged to be imminent and requires immediate action to eliminate or reduce the danger.

m. *Emergency Actions Taken*—In case of an emergency situation, list the actions taken. For non-emergency situation, put NA for "not applicable."

n. *Remedial Action Taken*—For non-emergency situations list remedial actions taken.

o. *Remarks*—For other pertinent information.

Format for Unsafe Dam Data Sheet (RCS-DAEN-CWE-17 and OMB No. 49-R0421

National Program of Inspection of Non-Federal Dams—Unsafe Dam Data Sheet

a. *Name:*
b. *Type:*
c. *Height:*
d. *Id. No.*
e. *Location:*
State: *County:*
Nearest D/S City, Town or Village:
River or Stream:
f. *Owner:*
g. *Date Governor Notified of Unsafe Condition:*
h. *Condition of Dam Resulting in Unsafe Assessment:*
i. *Description of Danger Involved:*
j. *Recommendations Given to Governor:*
k. *Urgency Category:*
l. *Emergency Actions Taken:*
m. *Remarks:*

APPENDIX G

National Program for Inspection of Non-Federal Dams—Monthly Progress Report (RCS-DAEN-CWE-19)

I. *Instructions for Monthly Progress Report.* The indicated information shall be provided in the format shown on page G-2.

1. Division Reporting:
2. Date:
3. Information Required for Each State Regarding Total Number of Inspections Performed (AE Inspections included) (Cumulative):

3.1. Number of Inspections Initiated by on-site inspection or the review of engineering data from project records.[1]

3.2. Number of Inspections Competed (The number of inspection reports which have been submitted to the District Engineer for review and approval).

3.3 Number of Dams Reported to the Governor as Unsafe.[2]

3.4. Number of Approved Inspection Reports Submitted to the Governor.

4. Information Required for Each State Regarding Inspections Performed Under AE Contracts (Cumulative):

[1] Each of the initiated inspections reported should be planned for completion within a reasonable period of time (30 days.)

[2] An unsafe dam is defined as a dam with deficiencies of such a nature that if not corrected could result in the failure of the dam with subsequent loss of lives or substantial property damage.

4.1. Number of Dams Contracted for Inspection by AE's with State or Corps.

4.2. Number of Inspections Initiated by AE's by on-site inspection or the review of engineering data from project records.[1]

4.3. Number of Inspections Completed by AE's (The number of inspection reports which have been submitted to the District Engineer for review and approval).

4.4. Number of Approved Inspection Reports Prepared by AE's Submitted to the Governor.

II. *Formation for Monthly Progress Report.*

National Program for Inspection of Non-Federal Dams—Monthly Progress Report

1. Division Reporting:
2. Date:
3. Information Required for Each State Regarding Total Number of Inspections Performed (Cumulative):

State	Inspection Initiated (3.1)	Inspection Completed (3.2)	Unsafe Dams Reported (3.3)	Approved Reports (3.4)
Total.....				

4. Information Required for Each State Regarding Inspections Performed Under A/E Contracts (Cumulative):

State	Dams Under A/E Contract (4.1)	A/E Inspections Initiated (4.2)	A/E Inspections Completed (4.3)	A/E Reports Approved (4.4)
Totals.....				

Appendix H

Suggested Scope of Work Contract for Architect-Engineer Services for Safety Inspection of Dams Within the State of

———

1. *General Description of Scope of Work.* The services to be rendered by the Architect-Engineer (AE) under the proposed contract shall include all engineering functions, hereinafter described, as needed to inspect the dams listed in Appendix A of this contract for the purpose of evaluating their risk of failure. A report which (a) describes the assessed condition of the dam, (b) provides conclusions as to which particular conditions could cause failure, (c) makes recommendations on remedial measures believed necessary, and (d) makes recommendations on whether and what type of future investigation should be conducted shall be provided for each inspected dam. The work shall proceed in accordance with Phase I of the Recommended Guidelines for Safety Inspection of Dams established by the Office of the Chief of Engineers (OCE) and the supplemented requirements listed in paragraph 3 below. The OCE guidelines are listed in Appendix B of this contract.

2. *Information and Services To Be Furnished by the Government.* The Contracting Officer will furnish the following information and services to the AE:

a. All information pertaining to each dam to be inspected as contained in the National Inventory of Dams.

b. Copies of recommended format for preparation of inspection report, engineering data check list and visual inspection check list.

c. All available pertinent information pertaining to the Dam Inspection Program and previous investigations having a bearing on inspections to be performed under this contract.

d. Right-of-entry for access to each dam site.

3. *Services To Be Rendered by the Architect-Engineer.* The principal services, subject to the optional provisions of the contract, to be rendered by the AE are itemized below:

a. *Technical Investigations.*

(1) *Engineering Data Collection.* To the extent feasible, the engineering data listed in Appendix I of the OCE guidelines relating to the design, construction and operation of the dam and appurtenant structures, should be collected from existing records and reviewed to aid in evaluating the general condition of each dam, including an assessment of the hydraulic and hydrologic features and structural stability of the dam. Where the necessary engineering data are unavailable, inadequate or invalid, a listing shall be made of those specific additional data deemed necessary by the engineer in charge of the investigation and included in the inspection report. The engineering data checklist provided by the Contracting Officer shall be used as a guide to compile this data.

(2) *Field Inspections.* The field inspection of each dam shall include examination of the items listed in Appendix II of the OCE guidelines, electrical and mechanical equipment for operation of the control facilities,

[1] See footnote on previous page.

reservoir area, downstream channel in the vicinity of the dam and any other significant feature to determine how these features affect the risk of failure of the dam. The inspection shall be conducted in a systematic manner to minimize the possibility of any significant feature being overlooked. The visual inspection checklist provided by the Contracting Officer shall be used as a guide to document the examination of each significant feature.

Particular attention shall be given to detecting evidence of leakage, erosion, seepage, slope instability, undue settlement, displacement, tilting, cracking, deterioration, and improper functioning of drains and relief wells. The degree and quality of maintenance and regulating procedures for operation of the control facilities shall be assessed. The design and existing condition of such control facilities (i.e., spillway, outlet works, etc.) shall be evaluated. An assessment of the degree of siltation that is evident and its effect on the dam's reservoir shall be performed. Photographs and drawings should be used to record conditions in order to minimize written descriptions.

(3) *Engineering Analyses.*

(a) *Evaluation of Hydraulic and Hydrologic (H&H) Features.* Evaluation of the hydraulic and hydrological features of each dam shall be based on criteria set forth in the OCE guidelines. If it is determined that the available H&H data are insufficient, the Contracting Officer must be so informed and may exercise an option of requiring the AE to perform an overtopping analysis at additional agreed-upon compensation. The methodology to be used by the AE for this analysis will be based on the OCE guidelines and subject to the approval of the Contracting Officer.

(b) *Evaluation of Structural Stability.* The evaluation of structural stability of each dam is to be based principally on existing conditions as revealed by the visual inspection, available design and construction information, and records of performance. The objectives are to determine the existence of conditions, identifiable by visual inspection or from records, which may pose a high risk of failure and to formulate recommendations pertaining to the need for any remedial improvements, additional studies, investigations, or analysis. The results of this phase of the inspection must rely substantially upon the experience and judgment of the inspecting engineer. Should it be determined that sufficient data are not available for a reasonable evaluation of the structural stability of a dam and appurtenances, the Contracting Officer should be informed which information is required prior to attempting to evaluate the risk of failure of the dam.

(c) *Evaluation of Operational Features.* Where critical mechanical/electrical operating equipment is used in controlling the reservoir of a dam, an evaluation of the operational characteristics of this equipment from the standpoint of risk of failure must be performed.

(d) *Evaluation of Reservoir Regulation Plan and Warning System.* The operational characteristics of each dam's existing reservoir regulation plan and warning system in event of a threatened failure shall be investigated.

b. *Emergency Situations.* The Contracting Officer must be immediately notified of any observed condition which is deemed to require immediate remedial action. After being notified, the Contracting Officer will contact the appropriate State personnel and will meet the AE at the site to determine the appropriate course of action. This will not relieve the AE of his responsibility to prepare a comprehensive inspection report at the earliest practicable date.

c. *Qualifications of Investigators.* The technical investigations shall be conducted by licensed professional engineers with a minimum of five years experience after licensing in the investigation, design and construction of earthfill, rockfill and concrete dams and/or in making risk of failure evaluations of completed dams. These engineers must be knowledgeable in the disciplines of hydrology, hydraulics, geotechnical, electrical, mechanical and structural engineering, as necessary. All field inspections should be conducted by engineers, engineering geologists and other specialists who are knowledgeable in the investigation, design, construction and operation of dams, including experts on mechanical and electrical operation of gates and controls, where needed.

d. *Preparation of Report.* A formal report shall be prepared for each dam inspected for submission to the Contracting Officer. Each report should contain the information specified in OCE guidelines and any other pertinent information. The recommended format provided by the Contracting Officer shall be used to document each report. The signature and registration identification of the professional engineer who directed the investigation and who was responsible for evaluation of the dam should be included in the report.

4. *Supervision and Approval of Work.* All work performed under this contract shall be subject to the review and approval of the Contracting Officer or his designee. Meetings will be held on a regular basis in the District office, during which the progress of inspections will be discussed and questions relating to inspection reports previously received by the Contracting Officer will be addressed. Reports will be revised as necessary when required by the Contracting Officer.

5. *Coordination.* During the progress of work, the AE shall maintain liaison with the

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*——— and other local authorities through the Contracting Officer as required to assure the orderly progression of the inspection. Copies of all correspondence with such authorities shall be provided to the Contracting Officer.

6. *Submission of Report.*

a. Each inspection report will be submitted for review to the Contracting Officer. Reports will be revised as required by the Contracting Officer. After all revisions have been made, the original and —— copies of each inspection report shall be submitted to the Contracting Officer.

b. Text of all reports shall be typewritten and printed on both sides of 8" x 10½" paper. All notes, inspection forms, sketches or similar matter shall be legible, distinct and suitable for reproduction.

7. *Period of Services.*

a. All inspections and reports included under this contract shall be completed within —— days from date of Notice to Proceed.

b. If the option for performing an H&H analysis for any particular site is exercised, the AE shall complete such analysis within —— days from date of Notice to Proceed. However, the overall completion time stated in paragraph 7a above shall not change.

Appendix I

Procedure for Using NASA Land Satellite Multispectral Scanner Data for Verification and Updating the National Inventory of Dams

1. *Purpose.* This appendix states the objective, defines the scope, prescribes procedures, and assigns responsibilities for using NASA Land Satellite (LANDSAT) Multispectral Scanner data along with NASA's Surface Water Detection And Mapping (DAM) Computer program to assist in verification and updating the National Inventory of Dams.

2. *Applicability.* This appendix is applicable to all divisions and districts having Civil Works responsibilities except POD.

3. *Reference.* NASA, DETECTION AND MAPPING PACKAGE, Users Manuals, Volumes 1, 2a, 2b, and 3 dated June 1976, published by the Johnson Space Center, Houston, Texas.

4. *Objectives.* Provide a uniform method, nation-wide, to help insure that all dams subject to Public Law 92-367, 8 August 1972 are properly identified and located in the National Inventory of Dams.

5. *Scope.* The computer printer overlay maps produced by the procedure described in reference 3b will be used by district and/or state or contractor personnel as a tool to assist in verification and updating of the National Inventory of Dams.

6. *Exceptions.* a. If a Division/District attempts the use of the procedure for a given region within their area of responsibility and finds the overlay maps cannot be used to assist in verification and updating the National Inventory of Dams, they may request an exception for a selected region. A selected region may include areas where conditions can reasonably be assumed to be the same as the region where the procedure was tried.

b. Request for exceptions should be documented to include firm boundary definitions and appropriate justification to demonstrate why the procedure cannot be used. This request should be submitted to WRSC WASH DC 20314, through the normal engineering chain of command.

c. Map overlays will be produced for all areas of the Continental United States even if they are not used in a few selected regions. This processing is required for a future Computer Water Body Change Detection system.

7. *Procedures.* Acquisition of LANDSAT data, registration of satellite coordinates to earth latitude and longitude and computer processing to produce overlay maps will be accomplished by two Regional Centers. Nashville District and Seattle District have been designated as the Regional Centers, with each responsible for processing maps by state based on Divisional assignments in Appendix A. Regional Centers will support divisions as follows:

Regional Center	Division
Nashville District	New England
	North Atlantic
	South Atlantic
	Ohio River
	Lower Mississippi Valley
	North Central
Seattle District	Southwestern
	Missouri River
	North Pacific
	South Pacific

8. *Responsibilities.* a. The Water Resources Support Center at Fort Belvoir has overall responsibility for coordination and monitoring of this activity between NASA, Division Offices, and Regional Centers, and for providing Regional Center funding.

b. Regional Centers are responsible for:

(1) Acquiring proper LANDSAT data tape from EROS Data Center (Sioux Falls, South Dakota). Actual data scene selection will be coordinated with Division and/or District to insure proper consideration is given to local priorities and seasonal coverage.

*Note: Write in the designated State Authority.

(2) Arranging computer processing support using NASA's DAM package.

(3) Establishing proper control between satellite scanner-oriented coordinates and earth latitude/longitude.

(4) Producing total coverage of map overlays at a scale of 1:24,000 and/or smaller scales as required by Divisions and/or Districts.

(5) Instructing District, State, or contractor personnel in the assembly and use of map overlays.

c. Divisions/Districts are responsible for:

(1) Designating one person from each Division and District as the point of contact with the Regional Center and provide this person's name and phone number to the Regional Center.

(2) Providing the Regional Center with map coverage of their area of responsibility. This will include state indexes and 7½ minute quadrangle sheets (scale 1:24,000) where available.

(3) Coordinating with the Regional Center in selecting LANDSAT data tapes.

(4) Providing information to Regional Center on scale and priorities of desired computer produced map overlays.

(5) Assembling computer print-outs into overlay maps, and using as appropriate to assist in verification and updating the National Inventory of Dams.

9. *Points of Contact.* The points of contact in the Regional Centers for this program are as follows:

Name, Office Symbol, and Telephone

Jim Cook—DAEN-ORNED, (615) 251-7366; FTS 852-7366.

Jack Erlandson—DAEN-NPSEN, (206) 764-3535; FTS 399-3535.

PART 223—BOARDS, COMMISSIONS, AND COMMITTEES

§ 223.1 Mississippi River Water Control Management Board.

(a) *Purpose.* This regulation establishes and prescribes the objectives, composition, responsibilities and authority of the Mississippi River Water Control Management Board.

(b) *Applicability.* This regulation is applicable to the Board members and to all field operating agencies concerned with water control management within the Mississippi River Basin.

(c) *Objectives.* The objectives of the Board are:

(1) To provide oversight and guidance during the development of basin-wide management plans for Mississippi River Basin projects for which the U.S. Army Corps of Engineers has operation/regulation responsibilities.

(2) To serve as a forum for resolution of water control problems among U.S. Army Corps of Engineers Divisions within the Mississippi River Basin when agreement is otherwise unobtainable.

(d) *Composition.* The Mississippi River Water Control Management Board is a continuing board consisting of the Director of Civil Works and Division Engineers serving in LMVD, MRD, ORD, NCD and SWD. The Director of Civil Works serves as permanent chairperson.

(e) *Responsibilities.* The Board functions under the general direction of the Chief of Engineers and is responsible for:

(1) Oversight of procedures for maintaining and improving inter-divisional coordination of water control management activities within the Mississippi River Basin.

(2) Oversight of the development and use of facilities (physical and computer models, Automatic Data Processing Equipment, and communications and information dissemination networks) needed to provide the best obtainable water control system for the entire Mississippi River Basin, utilizing the coordinated capabilities of projects now in operation and scheduled to be placed in operation in the reasonably near future.

(3) Oversight of basin-wide operating/regulation plans for U.S. Army Corps of Engineers projects in the Mississippi River Basin.

(4) Periodic reports to the Chief of Engineers regarding the Board's activities and its plans.

(f) *Procedures.* The procedures used by the board to carry out its responsibilities are as follows:

(1) The Board meets periodically to review past activities and project operations, and to discuss new or revised basin-wide operating/regulation plans.

(2) The Board acts on all proposals for (temporary or permanent) deviation from approved basin-wide operating plans.

(3) The Board provides instructions to committees under its jurisdiction and reviews their recommendations

for improvements in basin-wide water control management.

(g) *Board Authority.* The Mississippi River Water Control Management Board is delegated authority to establish continuing or ad hoc inter-divisional operating or study committees comprised of U.S. Army Corps of Engineers personnel to facilitate the work of the Board.

(h) *Funding.* Routine activities of the Mississippi River Water Control Management Board and its committees, such as travel and meeting expenses, will be funded by the separate members' offices using General Expense funds otherwise available. Major expenses connected with special studies or activities will be funded through the normal budgetary process. Budget requests will be supported by appropriate justification material.

(Act of Congress approved 1 March 1917, (33 U.S.C. 701) and sec. 2 of the Act of Congress approved 28 June 1938 as amended (33 U.S.C. 701c-1))

[43 FR 52236, Nov. 9, 1978]

PART 230—POLICY AND PROCEDURES FOR IMPLEMENTING NEPA

Sec.
230.1 Purpose.
230.2 Applicability.
230.3 References.
230.4 Definitions.
230.5 Policy.
230.6 Actions normally requiring an EIS.
230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.
230.8 Emergency actions.
230.9 Environmental Assessments (EA).
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230.12 Record of decision.
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230.23 Predecision referrals.
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APPENDIX A—FEASIBILITY STUDIES: ORGANIZATION AND CONTENT OF EIS'S AND SCOPING
APPENDIX B—ENVIRONMENTAL OPERATING PROCEDURES AND DOCUMENTS FOR REGULATORY FUNCTIONS
APPENDIX C—PROCESSING CORPS EIS
APPENDIX D—CATEGORICAL EXCLUSIONS FOR REAL ESTATE MANAGEMENT AND DISPOSAL ACTIONS

AUTHORITY: 16 U.S.C. 470 et seq., the "National Environmental Policy Act of 1969", as amended.

SOURCE: 45 FR 56761, Aug. 25, 1980, unless otherwise noted.

§ 230.1 Purpose.

This regulation provides policy and procedural guidance to supplement the Council on Environmental Quality (CEQ) final regulations implementing the procedural provisions of NEPA (40 CFR Parts 1500 through 1508, November 29, 1978). It includes introductory discussions (§§ 230.1 through 230.5), guidance on typical classes of actions requiring environmental documents (§§ 230.6 through 230.8), definitions of the various NEPA reports (§§ 230.9 through 230.13), guidance on procedural requirements (§§ 230.14 through 230.22), and other considerations related to NEPA reports and this regulation (§§ 230.23 through 230.26).

§ 230.2 Applicability.

This regulation is applicable to all OCE elements and all field operating activities having responsibility for preparing and processing environmental documents in support of Civil Works functions.

§ 230.3 References.

(a) Executive Order 11514, Protection and Enhancement of Environmental Quality, 5 March 1970, as amended by Executive Order 11991, 24 May 1977 (42 FR 26967, 25 May 1977).

(b) Executive Order 11593, Protection and Enhancement of the Cultural Environment, 13 May 1971 (36 FR 8921, 15 May 1971).

(c) Executive Order 11988, Floodplain Management, 24 May 1977 (42 FR 26951, 25 May 1977).

(d) Executive Order 11990, Protection of Wetlands, 24 May 1977 (42 FR 26961, 25 May 1977).

(e) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979 (44 FR 1957, 9 January 1979).

(f) Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(g) Clean Water Act (formerly known as the Federal Water Pollution Control Act) 33 U.S.C. 1344 (hereinafter referred to as Section 404).

(h) Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(i) Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.*

(j) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(k) Federal Water Project Recreation Action Act, 16 U.S.C. 668aa-668ee.

(l) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*

(m) Historic Sites Act 1935, as amended, 16 U.S.C. 461.

(n) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*

(o) Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1401 *et seq.*

(p) National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* (hereinafter referred to as NEPA).

(q) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

(r) Preservation of Historic and Archeological Data Act of 1974, as amended, 16 U.S.C. 469 *et seq.* (Also referred to as the "Reservoir Salvage Act" of 1960, as amended).

(s) River and Harbor Act, March 3, 1899 (30 Stat. 1151, 33 U.S.C. 401 and 403) and (30 Stat. 1152, 33 U.S.C. 407).

(t) Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271 *et seq.*

(u) "Navigable Waters, Discharge of Dredged or Fill Material," (40 CFR Parts 230.1 through 230.8), Environmental Protection Agency.

(v) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969," (40 CFR Parts 1500 through 1508, 29 November 1978), Council on Environmental Quality.

(w) "Protection of Historic and Cultural Properties" (36 CFR Part 800, 30 January 1979), Advisory Council on Historic Preservation.

(x) "Water Resources Council, Principles and Standards for Water and Related Land Resources Planning and Related Procedures for Level C Water Resources Planning (18 CFR Part 711) and (18 CFR Parts 713, 714, and 716)."

(y) Regulatory Programs of the Corps of Engineers 33 CFR Parts 320 through 329 (42 FR 37122-37164, 19 July 1977).

(z) "CEQ Memorandum of 11 August 1980, Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing NEPA."

(aa) "CEQ Memorandum of 10 August 1980, Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory."

(bb) "CEQ Memorandum of 17 November 1980, Guidance on Applying Section 404(r) of the Clean Water Act of Federal Projects which Involve the Discharge of Dredged or Fill Materials into Waters of the U.S., Including Wetlands."

(cc) ER 200-2-1.

(dd) ER 310-1-5.

(ee) ER 1105-2-32.

(ff) ER 1105-2-50.

(gg) ER 1105-2-129.

(hh) ER 1105-2-200.

(ii) ER 1105-2-460.

(jj) ER 1105-2-502.

(kk) ER 1105-2-811.

(ll) ER 1105-2-903.

(mm) ER 1105-2-920.

(nn) ER 1105-2-921.

(oo) ER 1130-2-401.

(pp) ER 1130-2-405.

(qq) ER 1130-2-406.

(rr) ER 1130-2-412.

(ss) ER 1130-2-413.

(tt) ER 1165-2-400.

(uu) ER 360-1-10.

(vv) ER 1165-2-501.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.4 Definitions.

(Also refer to applicable Corps of Engineers Regulations and 40 CFR Part 1508).

(a) *Administrative Actions.* Administrative actions are defined as report or permit approval (where the report, project, or permit approval is contingent upon 30-day FEIS review), initial land acquisition or award of the initial construction or maintenance contract.

(b) *Environmental review and consultation requirements.* Federal policies, including Public Laws and Executive Orders, which require reporting officers to consult, coordinate or otherwise interact with other agencies to produce a finding, determination, conclusion, opinion, evaluation or other decision statement concerning a specific type or class of environmental resources.

(c) *NEPA document*—An Environmental Assessment (EA), FONSI, Draft EIS, Final EIS, EIS Supplement, Draft Supplement EIS, Final Supplement EIS, and Supplemental Information Report.

(d) *Responsible Officials.* Each district engineer is considered as the designated Corps NEPA official who is responsible for agency compliance of NEPA related actions originating within their district boundaries. District engineers may also be designated as the responsible Corps official to provide agency views on other agency's EIS. At the Headquarters level, the Office of Environmental Policy Development HQDA (DAEN-CWR-P) WASH DC 20314 (phone number 202-272-0120) is responsible for overall review of Corps NEPA compliance and other questions concerning the requirements of this regulation. This office will serve as the central point of contact for information on Corps NEPA documents. HQDA (DAEN-CWP-P) WASH DC 20314 (phone number 202-272-0131) will serve as the central point of contact for the review of other agencies EIS and related NEPA documents.

§ 230.5 Policy.

The U.S. Army Corps of Engineers, under the direction and supervision of the Secretary of the Army, will continue to implement vigorously the National Environmental Policy Act of 1969, applicable environmental quality statutes and the regulations of the Council on Environmental Quality in carrying out its Civil Works mission consistent with statutory responsibilities and other essential considerations of national policy. From the initiation of project planning through design, construction and operation and maintenance, and in developing decisions in the regulation of activities affecting waters of the United States, the goals and policies of NEPA will be considered to insure decisions in the public interest. To this end, the Corps will:

(a) Follow a systematic interdisciplinary approach to integrate the natural and social sciences and the environmental design arts in planning and decisionmaking.

(b) Undertake early and continuing interchange of views with concerned agencies, groups and the public by the use of the scoping process.

(c) Integrate the requirements of NEPA with other planning and environmental review and consultation requirements.

(d) Prepare and make available to the public environmental documents for Corps actions and activities. Documents shall be clear, concise, emphasize significant issues and be supported by necessary environmental analysis.

(e) Explore, study and analyze all reasonable alternatives, including nonstructural alternatives, with a view to selecting a plan or approving an action that can best satisfy specified needs.

(f) Identify and make provisions for preserving unique cultural and biological resources, such as historic and archeological sites and threatened, endangered, and other significant species and their habitats.

(g) Utilize regulatory authorities to protect the waters of the United States including their adjacent wetlands and apply the same environmental criteria to Corps actions and activities.

(h) Implicit in this policy are four general environmental goals:

(1) To preserve unique and important ecological, aesthetic, and cultural values of our national heritage.

(2) To conserve and use wisely the natural resources of our nation for the benefit of present and future generations.

(3) To restore, maintain, and enhance the natural and man-made environment in terms of its variety, beauty, and other measures of quality.

(4) To create new opportunities for the American people to use and enjoy their environment.

§ 230.6 Actions normally requiring an EIS.

Listed below are types of Corps of Engineers actions which normally require the preparation of an EIS, although in certain cases an EA may be adequate (see § 230.7).

(a) *Legislation.* A legislative EIS will be prepared to accompany a bill or legislative proposal to Congress recommended by or with significant cooperation and support of the Corps of Engineers (exclusive of appropriations) significantly affecting the quality of the human environment. A Legislative EIS shall be prepared to conform to the requirements of these regulations except as provided in 40 CFR 1506.8(b).

(b) *Feasibility Studies.* Feasibility studies are planning actions conducted in accordance with the ER 1105-2-200 series of regulations. Studies resulting in recommendations by the reporting officer are documented in feasibility reports, which include Preauthorization Survey Reports, Post Authorization Advanced Engineering and Design (AE&D) Planning Reports, Significant Post Authorization Change (S-PAC) Reports and Detailed Project Reports (DPR). Where an EIS or EIS supplement is required it shall be integrated with the Main Report in the feasibility document and noted on the front cover as an Environmental Impact Statement. ER 1105-2-920 and Appendix A of these regulations provide guidance on the organization and content of reports and EIS for feasibility studies, respectively.

(1) *Survey Studies.* Survey studies are undertaken in response to specific Congressional Resolutions or by an item in an Act and, if completed through Stage 3 planning, result in a Survey Report.

(2) *Post Authorization Advanced Engineering and Design (AE&D) Planning Report.* The Phase I GDM is the report which provides the affirmation or reformulation of an authorized project. The Phase II GDM is the report which presents the results of the detailed design and cost estimate studies. Under certain conditions the Phase I GDM may be combined with the Phase II GDM in a combined AE&D planning and design memorandum. Projects in this category will be reviewed to determine the adequacy of the final EIS on file at the time the project was authorized and what type of further NEPA documentation is required. Refer to §§ 230.10, 230.11(b) and Appendix C of this part for discussion on the use of an EA or EIS supplements.

(3) *Continuing Authorities Studies.* Continuing authorities studies are prepared under one of the following authorities for authorization by the Chief of Engineers or the Secretary of the Army;

Sec. 3, Flood Control Act of 1945 (Snagging and clearing for navigation)
Sec. 205, Flood Control Act of 1948 (Small flood control projects)
Sec. 208, Flood Control Act of 1954 (Snagging and clearing for flood control)
Sec. 107, River and Harbor Act of 1960 (Small navigation projects)
Sec. 103, River and Harbor Act of 1962 (Small Beach erosion projects)
Sec. 111, River and Harbor Act of 1968 (Mitigation for navigation shore damages)
Sec. 202, Water Resources Development Act of 1976 (Drift and debris removal—commercial harbors)

Such studies generally result in Detailed Project Reports (DPR) which serves as a general design memorandum and provides the basis for approval of a project for construction.

(c) *Projects in a Construction Status.* This category includes authorized projects or separable project features or units, or major rehabilitation projects in a construction category. Actions in this category include the preparation of Feature Design Memorandum, Design Memorandum for Major Rehabilitation Projects, plans and specifications, and construction activities. Refer to § 230.11(b) and Ap-

pendix C for discussions on further NEPA documentation.

(d) *Operation, and Maintenance (O&M).* This category includes channel maintenance dredging and disposal activities, certain rehabilitation projects, the operation of dam and lake projects, lock and dam operations, aquatic plant control program and significant changes in the management of lands and project resources. Priority effort will be assigned to the preparation of an EIS for remaining O&M actions involving annually recurring dredging and disposal operations for which a final EIS has not been filed. A lesser priority effort will be assigned to any remaining O&M action on other completed projects.

§ 230.7 Actions normally requiring on Environmental Assessment (EA) but not necessarily an EIS.

Listed below are types of Corps actions which require at least the preparation of an EA.

(a) *Feasibility Studies.* Certain feasibility studies, such as some survey or continuing authorities studies with a limited range of planning objectives and plans, may be sufficiently analyzed and reviewed through the preparation and circulation of an EA together with the Finding of No Significant Impact (FONSI). For other Phase I GDM and certain Phase II GDM, which may include a PAC, the EA together with the FONSI will be included in the Main Report in place of an EIS.

(b) *Projects in a Construction Status.* Certain feature design studies which result in changes to the project but do not result in a S-PAC may also be sufficiently treated through the use of an EA.

(c) *Operation and Maintenance.* An EP may be prepared to analyze changes in O&M activities including new disposal areas not discussed in the final EIS covering the O&M activity and for certain infrequent or once-only minor O&M activities, such as infrequent maintenance dredging and disposal operations, infrequent reservoir debris removal and post-flooding shoal removal operations, public use area modifications or relocations, habitat improvement projects, general plans, modifications to existing project structures and facilities and certain rehabilitation projects.

(d) *Real Estate Management and Disposal Actions.* All real estate management and disposal actions not categorically excluded by Appendix D require an EA or an EIS, including:

(1) Disposal of a Civil Works project or portions of project properties not reported as excess to the General Services Administration.

(2) Grants of easements for oil and gas pipelines involving disturbances to earth, air or water.

(3) Interchanges of land with other Federal agencies.

(4) Disposals of real property for public port and industrial purposes.

(5) Grants of easements for road rights-of-way involving disturbances to earth, air or water.

(6) Grants of leases or easements for sewage or water treatment facilities and land fills.

(e) *Regulatory Permits.* See Appendix B.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.8 Emergency actions.

District engineers shall respond to emergency situations which may have a significant environmental impact without observing the provisions of this regulation. However, this exemption shall apply only to an immediate action which the district engineer determines is necessary to prevent or reduce risks to life, health, or property, or severe economic losses. When an emergency action covered by this section is taken which may have a significant environment impact, and is considered major in scope, e.g., extensive or lengthy restoration following a disastrous event, DAEN-CWO in coordination with DAEN-CWR-P will consult with CEQ concerning appropriate alternative NEPA arrangements. Emergency actions include:

(a) Emergency and disaster recovery actions performed under Public Law 99, 84th Congress, 69 Stat. 186, 33 U.S.C. 701n;

(b) Emergency actions directed by the Federal Emergency Management Agency (FEMA) under the provisions

of Pub. L. 93-288 except where FEMA determines than an EA or EIS is required, the reporting officer will provide all necessary information to FEMA upon request.

(c) Other emergency actions, as determined by the district engineer, which do not permit delays necessary to process environmental documents such as emergency streambank or shoreline protection under provisions of Section 14 of the FCA of 1946; emergency dam, stilling basin or lock inspection; sunken vessel removal from navigable waters; etc.

(d) Emergency regulatory permit actions will be processed in accordance with 33 CFR Part 325.

§ 230.9 Environmental Assessments (EA).

(a) *Purpose.* An EA is a brief document which provides sufficient information on potential environmental effects of the proposed action and its alternatives, to the district engineer, to determine if an EIS is required and to assist the district engineer in complying with NEPA whether or not an EIS is necessary. The district engineer is recognized as the responsible Corps NEPA official who will make this determination in the FONSI prepared for the proposed action. It shall be the responsibility of the district engineer to keep the public informed of the availability of the EA and FONSI (see § 230.10 and 40 CFR 1506.6). For regulatory permit actions refer to Appendix B for guidance on public involvement.

(b) *What to Prepare.* An EA will be prepared and processed for those actions which are normally covered by an EA (§ 230.7), actions which normally require an EIS but under certain situations are not considered to be a significant action as discussed in § 230.6, (feasibility studies) or where the nature of the action is one without precedent. A separate EA is not required for those actions discussed in § 230.6 where an EIS will normally be prepared or for actions categorically excluded discussed in Appendix D. If a public meeting is to be held in connection with the proposed action the EA shall be made available to public at least 15 days in advance of such meeting.

(c) *Format.* While no special format is required, the EA should include a brief discussion of the need for the proposed action, its environmental impacts, alternatives to the proposed action and a list of the agencies, interested groups and the public consulted. The EA is not intended to be a substitute for an EIS and should not follow the EIS format in 40 CFR 1502.10. The document, supported by necessary appendixes or technical data to be retained by the district, is to be concise for meaningful review and decision (should not normally exceed 15 pages), using an interdisciplinary approach with disciplines appropriate to the scope of environmental issues expected with the proposed action and its alternatives. An EA may be supplemented or revised, as required. The EA must show compliance with appropriate environmental quality protection statutes and other environmental review requirements as discussed in § 230.25. In the case of feasibility studies where an EA is used in place of an EIS, the Main Report and EA will be circulated for concurrent consultation and comment to Federal and Federal-state agencies having jurisdiction by laws or special expertise to accomplish this consultation or coordination process.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.10 Finding of No Significant Impact (FONSI).

A FONSI shall be prepared by the district engineer or delegated official to accompany an EA prepared for a proposed action when, as a result of the analysis included in the EA, it is concluded that the proposed action will not have significant effects on the environment. The FONSI will be based on the information analyzed in the EA, reflecting pertinent data obtained from cooperating Federal agencies having jurisdiction by law and/or special expertise and the interested public. It shall briefly present the reasons why the action will not have a significant impact on the quality of the human environment and state that an EIS is not required. The FONSI should not directly duplicate

any of the information contained in the EA but incorporate it by reference. In the case of feasibility studies, where a tentative determination has been made based on an EA that an EIS will not be prepared, the unsigned FONSI together with the EA will be included within the Main Report and circulated for review and comment to agencies, groups and members of the public who have expressed an interest in the project for a 30-day period (40 CFR 1501.4(e)(2)). A notice of availability of the EA and report will be sent to all other parties on the mailing list at this time. The same number of copies of the document(s) shall be circulated as a draft EIS except that only one copy shall be sent to Director, Office of Environmental Review (A-104), EPA, Wash., DC 20460. After review of the comments received the district engineer will prepare a comment-response display format (similar to that prescribed for an EIS) and attach it to the EA. If the district engineer determines after review of the comments that the proposed action will not have significant effects on the environment, the FONSI will be signed and included with the EA in the Main Report. If the district engineer determines after review of the comments received that an EIS should be prepared, procedures outlined in Appendix A shall be followed. In all other Corps actions discussed in § 230.7 which do not require circulation of the FONSI as outlined in 40 CFR 1501.4(e)(2), except for EPA review as noted below, the FONSI will be signed and placed in the project file. A copy of the FONSI and EA shall be sent to the concerned Regional Administrator(s) of EPA requesting agency comments within 15 working days under Section 176(c) and 309 of the Clean Air Act, as amended. Upon completion of the documentation, a notice of availability of the FONSI will be sent to concerned agencies, organizations an members of the public known to have an interest in the proposed action in accordance with 40 CFR 1501.4(e)(1). For regulatory permits refer to Appendix B for guidance.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.11 Environmental Impact Statements (EIS).

An EIS will be prepared for all Civil Works activities when the proposed action is expected to have significant effect upon the quality of the human environment. Types of activities which normally require the preparation of an EIS are listed in § 230.6. Activities which may require an EIS, as determined by the findings of the EA, are listed in § 230.7.

(a) *Format.* (1) *Draft EIS.* Draft EIS prepared for feasibility studies and regulatory permits shall follow the format outlined in Appendixes A and B, respectively. A draft EIS prepared for all other Corps actions shall follow the format outlined in 40 CFR 1502.10 through 1502.18 except that a public involvement section will be included within the main text following the list of preparers, as discussed in § 230.19(c), 40 CFR 1502.7 discusses page limits, 40 CFR 1502.19 discusses circulation and 40 CFR Part 1503 discusses the commenting process.

(2) *Final EIS.* Final EIS prepared for feasibility studies shall follow the guidance in Appendix A. A final EIS prepared for all other Corps actions including regulatory permits, may take the form of an "abbreviated" document described in 40 CFR 1503.4(c) if the changes in response to comments and Corps internal review are minor and consist of factual corrections and/or are confined to explanations of Corps actions, citing authorities or reasons which support the agency position. With this revised procedure the draft EIS is incorporated by reference into the final EIS resulting in a savings of time, money and paper work. Letters transmitting the draft EIS should advise addresses of the probable use of this procedure so that the draft EIS and appendixes may be retained for future reference in reviewing the final EIS. The format for an abbreviated final EIS prepared under this revised procedure will, as a minimum, consist of a new title page, summary, errata or correction sheet(s), comments and responses and a brief public involvement section. The transmittal letter shall note the filing date and availability of the draft EIS. How-

ever, in filing the abbreviated final EIS with EPA (Washington Office), five copies of the draft EIS shall be included in the transmittal. If the comments on the draft EIS raise significant issues, present new reasonable and feasible alternatives, or other important matters not addressed in the draft EIS, a final EIS following the format outlined in 40 CFR 1502.10 shall be utilized. District engineers shall be responsible for determining the type of final EIS to prepare.

(b) *Supplements.* A Supplement to the draft or final EIS on file will be prepared whenever significant impacts resulting from changes in the proposed plan or new significant impact information, criteria or circumstances relevant to environmental considerations impact on the recommended plan or proposed action as discussed in 40 CFR 1502.9(c). A supplement to a draft EIS will be prepared, filed and circulated in the same manner as a draft EIS and will be titled "Supplement I, Supplement II, etc. Appropriate sections in the final EIS and Record of Decision will address the new information or changes as amended by the supplement and as a result of the comments received on the draft and supplement EIS. A supplement to a final EIS will be prepared and filed first as a *draft* supplement and then as a *final* supplement. Both documents will be filed and circulated in the same manner as a draft and final EIS. Supplements to a draft or final EIS filed before 30 July 1979 may follow the format of the previously filed EIS. Supplements to a draft EIS filed after this date will follow the format outlined in 40 CFR 1502.10 or Appendix A or B, as appropriate. References to the draft or final EIS being supplemented should be used to eliminate repetitive discussions in order to focus on the important issues and impacts. The transmittal letter to EPA as well as the cover sheet shall clearly identify the title and purpose of the document as well as the title and filing date of the previous EIS being supplemented and how copies can be obtained. The decision will be made on the proposed action by the appropriate Corps official after the final supplement has been on file for 30 days, and a Record of Decision will be prepared and signed.

(c) *Tiering and Program EIS.* Tiering, as discussed in 40 CFR 1502.20 and 1508.28 may be undertaken in certain types of Corps actions where the use of a broad programmatic EIS to be followed with site specific EIS or EIS supplements will concentrate on the significant decision-making issues at each level or stage of phased implementation and environmental review. The initial program EIS must present sufficient information regarding the generic impacts of the proposed action so that the decision makers can make a reasoned judgement on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The program EIS should identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EIS or EIS supplements, as appropriate, at each stage of phased implementation or major Corps decision points.

(d) *Supplemental Information Reports.* Whenever it is clearly understood that an EIS supplement is not necessary but where is only necessary to provide supplemental information to a point of concern discussed in the final EIS (and such point of concern was considered in making the decision on the proposed action), a supplemental information report will be prepared and filed with EPA. A separate category of information reports will be listed in EPA weekly list of EIS availability published in the FEDERAL REGISTER. The report will be circulated for information to concerned agencies and the interested public who provided comments on the draft and/or final EIS at the same time it is filed with EPA. No administrative waiting periods are required. For postauthorization planning reports a supplemental information report may be used to indicate compliance with environmental protection statutes, Executive orders, etc., not completed at the time the project was authorized. It will be attached as an appendix to the Main Report and circulated along with the draft report. It will be filed with EPA when the report is approved. District engineers

will provide eight (8) copies of the report to appropriate elements within OCE or to the division engineer, as appropriate, for filing with EPA. The supplemental information report, together with the previously filed final EIS, may also be utilized as the document addressing the Section 404 evaluation for Corps projects in AE&D or construction status not included within a planning report or SPAC sent to Congress under Section 404(r).

(e) *Other Reports.* District engineers may also publish periodic fact sheets and other informational documents on long-term or complex EIS to keep the public informed on the status of the proposed action. These documents will not be filed with EPA.

§ 230.12 Record of decision.

The Record of Decision shall include the requirement in 40 CFR 1505.2 containing (a) a statement of what the decision was, (b) an identification of the environmentally preferable alternative or alternatives, (c) a discussion of economic, technical considerations and agency statutory missions and other essential considerations of national policy balanced by the responsible official in making the decision, and (d) a statement of whether all practicable means to avoid or minimize environmental harm from the alternative selected, and if not, why not. This discussion shall identify mitigation measures and include a summary of any monitoring or enforcement program as applicable for any mitigation committed as part of the decision. In addition, it shall discuss compliance with Section 404 and other environmental statutes or Executive Orders having a bearing on the final decision. In the case of regulatory permit actions, see Appendix B. A Record of Decision will be completed to document the Corps final decision or recommendation to Congress on a proposed action requiring an EIS. The Record of Decision replaces the Statement of Findings (ER 1105-2-509) which is recinded by this regulation. The Record of Decision will be signed at the level approving the action and/or filing the final EIS. A notification letter of issuance of a Record of Decision, together with a signed copy of the Record of Decision, shall be sent to the Director, Office of Environmental Review (A-104), EPA, 401 M Street, S.W., WASH DC 20460 to close the administrative record for the EIS. This entry will indicate the Corps final procedural NEPA compliance with the CEQ regulations. A signed copy of the Record of Decision shall also be sent to concerned agencies, organizations and members of the public known to have an interest in the project. For Corps Survey Reports and AE&D planning reports requiring congressional authorization, the Secretary of the Army (S/A) will approve the report and sign the Record of Decision when the report is transmitted to Congress. For certain AE&D planning reports, continuing Authority Reports, Major Rehabilitation Reports and certain construction projects requiring OCE approval, the Director of Civil Works after review of the comments received following the filing of the final EIS will approve the project and sign the Record of Decision. For Administrative AE&D planning reports delegated to the division engineer for approval, certain projects in a construction category, completed projects in operations and maintenance and real estate actions, the Division Engineer after review of the comments received following the filing of the final EIS will approve the project and sign the Record of Decision. In the case of O&M and certain construction projects involving the disposal of dredged or fill material into waters of the U.S., the signing of the Record of Decision may be deferred until after completion of all public interest review requirements but prior to initiation of the proposed action when compliance was not attained concurrently with the circulation and review of the NEPA document. The district engineer preparing the EIS will be responsible for preparing the draft Record of Decision for signature of the Division Engineer, Director or S/A as appropriate. It will accompany the letters of comment and Corps responses received on the final EIS as discussed in § 230.19(d). After signing the Record of Decision the approving official will transmit a copy to the district engineer for distribution to concerned agencies, organizations and

members of the public. A Record of Decision is not required for decisions on proposals that do not require an EIS.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.13 Monitoring and mitigation.

District engineers shall be responsible for preparing reports which will provide information on the current status of environmental monitoring and authorized mitigation measures undertaken on Corps projects in accordance with 40 CFR 1505.3. These reports will be made available to cooperating and commenting agencies who proposed mitigation measures which were adopted by the Corps. Reports will not be required for those Corps actions with a final EIS on file as of 30 July 1979 except where environmental monitoring and/or authorized mitigation measures were underway or established in the final EIS. Budget requests will recognize the importance and timing of authorized monitoring and mitigation features and include necessary funds to insure phased project development.

§ 230.14 Lead and cooperating agencies.

(a) *Lead Agencies.* Where another Federal agency is directly involved with the Corps in an action or group of actions directly related to each other because of their functional interdependence or geographical proximity, consideration should be given to the designation of a lead agency to assume responsibility for the preparation of an EIS to cover all of the Federal actions involved. This determination should be accomplished by letter or memorandum of agreement between the district or division engineer and the regional office of the agency following the procedures outlined in 40 CFR 1501.5(c). If the question of lead agency designation cannot be resolved by the district or division engineers, the administrative record will be forwarded to HQDA (DAEN-CWZ-P) WASH DC 20314 for review and possible resolution prior to requesting resolution by CEQ as outlined by 40 CFR 1501.5(e) and (f).

(b) *Joint Lead Agencies.* The use of a joint lead agency designation with another Federal agency as provided for in 40 CFR 1501.5(b) may also be utilized in certain Corps actions, primarily regulatory, where more than one agency is involved in the environmental review and approval or authorization of the proposed action. This joint lead determination should be documented by letter or memorandum prior to initiation of EIS preparation.

(c) *Cooperating Agencies.* As soon as practicable after a determination has been made to prepare an EIS and the lead agency designation issue resolved (if appropriate), the district engineer shall request any other Federal agency having jurisdiction by law or special expertise with respect to any environmental effect involved in the proposal to become a cooperating agency. This request, usually directed to the regional office of the agency, may be accomplished by invitation to participate in the scoping process or by a separate letter requesting coordination. In the case of feasibility studies where the scoping process is integrated within the Corps planning process, a separate letter will be required. For Corps actions where an EIS will not be required, coordination with Federal agencies having jurisdiction by law or special expertise will be requested by separate letter or public notice at the time the EA is initiated. See § 230.25 for a listing of Federal agencies and applicable environmental review and consultation requirements. Duties and responsibility of cooperating agencies are outlined in 40 CFR 1501.6.

(d) *Corps as a Cooperating Agency.* Where the Corps is not the lead or joint-lead agency for a proposed action, and has been requested to become a cooperating agency, district engineers shall participate and review the EIS work of the lead agency relevant to the Corps area of expertise or jurisdiction by law (i.e., flood control, navigation, hydropower and regulatory functions). This coordination will insure that the draft EIS produced will satisfy the procedural and statutory requirements of the Corps and could possibly be adopted as a Corps EIS in accordance with 40 CFR 1506.3. Duties and responsibilities of a cooperating agency are discussed 40 CFR

1501.6 (b) and (c). In more complex actions where the Corps has been asked to participate beyond providing available information, routine coordination and review, and involves reimbursement of non-routine services (requests for personnel, etc.), or where more than one district or division may be involved, a memorandum of agreement with the lead agency should be prepared.

§ 230.15 Scoping.

Early agency and public participation planned and incorporated into the conduct of all Corps EIS actions will be referred to as "Scoping". This is a mandatory process and shall begin as soon as practicable after a determination is made to prepare an EIS (or EIS supplement, if appropriate). Refer to 40 CFR 1501.7 for a complete discussion on scoping requirements. For those actions discussed in § 230.6 where an EIS will normally be prepared, the scoping process will be initiated when the EIS preparation commences. The notice of intent for these actions will be prepared in accordance with ER 200-2-1 with special reference to 40 CFR 1507.3(e) and § 230.7 of Appendix A on the timing of the notice for Survey Studies. For all other Corps actions listed in § 230.6, the scoping process will begin at the earliest time practicable preceded by the notice of intent. The provisions of 40 CFR 1501.7 shall be applied in the development of an EIS for the proposed action. The use of scoping meetings is optional. However, meetings are encouraged where public input to the EIS is not generally obtained by regular communication, notices, etc. Such input could include public perception of the action, identification of major issues and environmental values, and development of alternatives and mitigation plans. No formal scoping process need be undertaken for those Corps actions categorically excluded or for actions which do not normally require an EIS. However, coordination with Federal agencies having jurisdiction by law or special expertise will be required during the preparation of the EA to identify issues relating to compliance with environmental review and consultation requirements.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.16 Notice of intent.

A notice of intent to prepare a draft EIS for publication in the FEDERAL REGISTER is discussed in ER 200-2-1. District engineers will provide a copy of the notice of intent to the Director, Office of Environmental Review (A-104), EPA, Washington, D.C. 20460 and to the appropriate regional office(s) of EPA at the time the notice is sent to the FEDERAL REGISTER.

§ 230.17 Filing requirements.

Draft and final EIS, EIS supplements and supplemental information reports shall be filed with EPA no earlier than they are also circulated to all parties on the project mailing list. Five (5) copies should be sent to: Director, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. District engineers shall file draft EIS, Supplements to a draft EIS, and draft supplements directly with EPA. Final EIS and final supplements shall be filed by appropriate elements within OCE for Survey Reports, AE&D planning reports requiring Congressional authorization, DPR, certain Phase I and Phase II GDM, and certain construction projects requiring OCE approval. Division engineers shall file final EIS and final supplements for administrative Phase I GDM and certain Phase II GDM and construction projects delegated to the division engineer for approval, completed projects in operations and maintenance, and real estate actions. Final EIS or final supplements for permit actions will be filed by the district engineer after appropriate reviews by division and the incorporation in the EIS of division's comments. Supplemental information reports will be filed with EPA by the office approving the action and/or filing the final EIS. OCE and/or division will notify field office counterparts when to circulate the final EIS or final supplement and will not file the final document with EPA until notified by the district engineer that distribution of the document has been completed.

(a) *Timing Requirements.* EPA will publish a notice in the FEDERAL REGISTER each week (generally on Friday) listing environmental documents filed during the preceding week. The Friday date always starts the review period even if the notice appears the following Monday or later. No administrative action will be taken regarding the proposed action sooner than 90 days after a draft EIS has been filed with EPA as noticed in the FEDERAL REGISTER, or sooner than 30 days after the final EIS has been filed with EPA and noticed in the FEDERAL REGISTER. The 30-day minimum period of review for the final EIS may run concurrently with the minimum 90-day period if the final EIS is filed within 90-days after a draft EIS is filed. However, district engineers shall allow not less than 45 days for comment on the draft EIS. In unusually large or complex actions consideration should be given to a period longer than 45 days for review and comment on the draft EIS.

(b) *Expedited Filing.* In certain cases where the proposed action must be undertaken within critical time restraints or because of compelling reasons of national policy, a shortend review period may be recommended. In such cases, district engineers will provide the necessary information and facts to HQDA(DAEN-CWZ-P) WASH DC 20314 for consultation with EPA (or with the Council for a supplement to an EIS) for a reduction in the precribed review periods. EPA may also extend the review periods on certain actions as described in 40 CFR 1506.10(d).

(c) *Timing Requirements on Supplements.* The minimum period or review for a draft and final supplement is the same as the review period for a draft and final EIS as discussed in § 230.17(a) unless alternative procedures are approved by the Council (see 40 CFR 1502.9(c)(4)). Draft and final supplements covering project design changes or actions not having a bearing on the overall project for which a final EIS has been filed, will observe the minimum review periods for only those actions addressed in the supplement and not curtail other ongoing or scheduled actions on the overall project which have already complied with the procedural requirements of NEPA. No minimum administrative waiting periods are required for supplemental information reports discussed in § 230.11(d).

(d) *Timing Requirements During Departmental Reviews.* Final EIS included within Corps Survey and AE&D planning reports circulated by OCE for Departmental review to concerned Federal agencies and the affected State(s) will be given a 90-day review period. All other parties known to have an interest in the proposed action not contacted by OCE will be given the normal 30-day review period with the review beginning with the notice of availability published in the FEDERAL REGISTER.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.18 Availability.

Draft and final EIS and supplements, except for certain appendixes as provided in 40 CFR 1502.18(d), shall be made available to all public agencies, groups and individuals known to have an interest in the proposed action. A notice of availability of the EIS document will be sent to all others on the mailing list. Copies of the EIS will also be furnished in response to requests from the public. All parties not receiving a complete set of appendixes shall be advised of the location of a complete set such as (local public libraries, planning agencies, etc.) or how they may be obtained, including the cost. In certain cases the district engineer may circulate the EIS summary in lieu of the entire EIS. However, the procedures outlined in 40 CFR 1502.19 must be carefully followed. The district engineer should consult with the division engineer prior to using this procedure. Single copies will be furnished without charge to individuals on the mailing list and individuals requesting copies. For multiple copy requests, reproduction costs may be recouped from the requestor but shall not be greater than the actual costs of reproducing copies required to be sent to other Federal agencies. Copies of comments received from other Federal agencies on a draft EIS prior to the availability of the final

EIS and other related EIS documents shall be made available to the requestor in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552) without regard to the exclusion for interagency memoranda where such memoranda transmits comments of Federal agencies on the environmental impact of the proposed action.

§ 230.19 Comments.

District engineers shall request the comments of Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved, and any appropriate Federal, State or local agency which is authorized to develop and enforce environmental standards. Comments will also be requested from state and local clearinghouses in accordance with OMB Circular A-95 (Revised). District engineers shall maintain and periodically update the mailing list and provide timely notices of NEPA related public meetings, workshops, etc. and the availability of environmental documents to all those parties on the list as well as notifying the general public through such means as newspapers or other local media. (See discussion in 40 CFR 1506.6 (a) and (b)(1) and (3).

(a) *Time Extensions.* Requests for extension of time to review and comment on an EIS, either oral or written, will be considered on a case by case basis. Timeliness of distribution of the document, prior agency involvement in the proposed action, and the action's scope and complexity will be used in making this determination. A lack of response may be presumed to indicate that the agency contacted has no comment to make, except that cooperating Federal agencies with jurisdiction by law, special expertise or authorized to enforce environmental standards shall be requested to comment even if the reply is that it has no comment. Time extensions of at least 15 days will be granted to timely requests for the entire draft EIS when only the summary of the draft EIS was circulated.

(b) *Public Meetings and Hearings.* If a public meeting or hearing is held in connection with an EIS for a proposed action, the draft EIS will be made available to the public at least 15 days in advance of the meeting or hearing (unless the meeting is a scoping meeting as discussed in § 230.15). Public meetings or hearings, other than those required by Corps regulations, will be at the option of the district engineer and should be held whenever an exchange of views and information would be beneficial. (40 CFR 1508.6(c).)

(c) *Comments Received on the Draft EIS.* Comments on the draft EIS that raise significant issues, present new reasonable or feasible alternatives or other important matters not addressed in the draft EIS shall receive responses in the final EIS in accordance with 40 CFR 1503.4(a). A public involvement section shall be included in the main text following the list of preparers for each EIS prepared by the Corps. In the draft EIS this section will briefly describe the public involvement program or scoping process undertaken during the conduct of the study and/or development of the draft EIS. Significant environmental concerns or issues related to the proposed action which surfaced as a result of the scoping process and had a major influence on the proposed action and how such concerns were incorporated into the draft EIS will also be discussed in this section. A list of parties receiving copies of the draft EIS will be included in this section. In the final EIS this public involvement section will be expanded to include a discussion of substantive issues, new alternatives or new data requiring clarification or resulting in changes or modifications of the proposed action. Issues or questions may be appropriately consolidated or grouped, with the source(s) of the comment identified. The discussion shall include references to appropriate paragraphs in the text of the final EIS where a thorough discussion of the significant issues raised new alternatives considered or other important matters can be found. A list of parties providing comments on the draft EIS will be included in this Section. Copies of all letters received (or summaries thereof where numerous repetitive "form" letters are received), together with Corps responses, may be included in the main text of the EIS if a limited number are received, or in-

cluded in an Appendix when a large number of comments are received. In any case, all comments shall accompany the EIS whether or not the comment is thought to merit individual discussion in the main text. Use of the single-page correspondence-response reduced display format is recommended as a way to reduce reviewing time, assure all comments are responded to and make the review less confusing. Pages reproduced in this format should be placed in the EIS to read from left to right (normal left margin turned to become the top of the page). Reduction should be limited to one-half size in order to remain readable. A table of contents showing the commentor's name and the page(s) where the letter and responses are located will be placed at the beginning of the Section. Letters will be arranged as follows: Federal, State, groups or organizations and the public. See Appendix A, § 230.6(i)(6) for specific guidance on presenting comments on EIS for feasibility studies.

(d) *Comments Received On the Final EIS.* Letters of comment received during the 30-day review period on the final EIS, or 90-day review in the case of a final EIS for a feasibility study sent out for Departmental review, will be answered by district engineers or OCE, as appropriate. Responses shall indicate how substantive issues raised by the comments have been addressed citing authorities or rationale which support the Corps position. In the case of Survey or AE&D planning reports where the final report and EIS, BERH or MRC report, and the proposed Chief's report are circulated for review. All incoming letters will be answered, if appropriate, by DAEN-CWP). A letter signed by Executive Director, Engineer Staff, directing all comments to be sent to OCE ATTN: (DAEN-CWP), will be sent to the district for use in transmitting the final EIS and the BERH and proposed Chief's report to other interested parties on the mailing list and in response to requests from the public. After the review period is over, DAEN-CWP will provide copies of all incoming letters received in OCE to the district engineer for use in preparing the draft Record of Decision. For all other Corps actions except permit actions, five (5) copies of all incoming letters (even if the letters do not require a response) together with the district engineer's response (as appropriate) and the draft Record of Decision will be submitted to the division engineer or appropriate element within OCE whoever filed the final EIS. After review of the draft and final EIS and the comments received and Corps responses, the Division Engineer (for those actions which the Division Engineer has approval authority), Director of Civil Works or S/A will sign the Record of Decision. For permit actions the district engineer will, after making the decision, sign the Record of Decision unless the action is forwarded to higher authority for a decision. In the case of a letter recommending a referral under 40 CFR Part 1504, reporting officers will notify (DAEN-CWZ-P) and request further guidance. The Record of Decision will not be signed nor any action taken on the proposal until the referred case is resolved.

(e) *Commenting on Other Agencies EIS.* District engineers shall review and comment on draft EIS or related NEPA documents prepared by other Federal, state and local agencies when the environmental impacts of the proposed action are related to the Corps jurisdiction by law or special expertise, as provided in 40 CFR 1503.2 and 1503.3. Refer to reference (bb) of § 230.3 and interim Corps guidance on commenting on another agency EIS which involves the discharge of dredged or fill materials into waters of the U.S., including wetlands, and the agency intends to request authorization or funding from Congress for the proposed action under provisions of Section 404(r) of the Clean Water Act. Unless otherwise directed, the district engineer in whose area the proposal is located will review and provide comments directly to the appropriate agency within the time period specified with a copy provided to DAEN-CWP-P. In the case of Federal, national or geographic program EIS; legislative; or other major policies; DAEN-CWP-P may designate a district or division engineer to provide a coordinated agency reply to the agency or request review and comment from Corps

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field offices for a coordinated agency reply to be signed at OCE or higher level. Comments on another agency draft EIS should be specific and may address either the adequacy of the EIS or the merits of the alternatives discussed, or both, restricted to jurisdiction by law and special expertise as defined in 40 CFR 1508.15 and 1508.26. As a cooperating agency the Corps will always provide comments on another Federal agency draft EIS even if the response is no comment. The specificity of comments in these cases are discussed in 40 CFR 1503.3 (c) and (d). If comments are prepared on another agency's final EIS one copy shall be furnished to Director, Office of Federal Activities, A-104, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460 and a copy provided to DAEN-CWP-P. Copies of comments on state or local final EIS which are unrelated to the Federal NEPA program will not be furnished to EPA.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.20 Integration with state and local procedures.

District engineers shall cooperate, to the fullest extent practicable, with State and local agencies to reduce duplication between Corps NEPA actions and those required by State and local requirements (40 CFR 1506.2 (b), (c) and (d)). Normally, this cooperation will consist of providing information on regulatory responsibilities with respect to the proposed action to determine the extent and degree of involvement of the Corps and whether an assessment or joint EIS is desirable. If the proposed State or local action falls within the Corps' area of NEPA activities, the concerned district engineer, as a joint lead agency, shall cooperate with the State or local agency in fulfilling State environmental impact statement requirements (if applicable) as well as Federal NEPA laws so that one document will comply with all applicable laws. An EIS produced as a joint Corps-State or local agency document will be prepared and processed in accordance with applicable sections and appendixes of these regulations.

§ 230.21 Adoption of EIS.

The district engineer may adopt or prepare a supplement to another Federal agency's draft or final EIS or portion thereof provided that it meets the standards for an adequate EIS. However, the need to adopt and supplement another agency's EIS concerning a proposal which involves the authorities or regulatory responsibilities of the Corps can be minimized or avoided if the district engineer carefully follows the procedures in 40 CFR 1501.6 (cooperating agencies). If the Corps becomes a cooperating agency it may adopt without recirculating the EIS of a lead agency provided it contains the necessary information to support the Corps decision making in compliance with NEPA. If the Corps is not a cooperating agency and a decision is made to adopt another agency's EIS, the district engineer will review the criteria set forth in 40 CFR 1506.3(b) to determine whether to recirculate it as a final or a draft. In either case the document will be recirculated with a new cover, cover sheet, summary and distribution list. This package will be attached to the front of the agency's EIS. The cover sheet will clearly identify the EIS as a Corps EIS and the summary will describe the basis for the Corps adoption with a brief description of Corps involvement with the proposed action. Circulation, filing and review period will be the same as a regular EIS. If a decision is made to supplement another agency's EIS or portion thereof where the other agency's EIS does not provide sufficient information to enable the Corps to support its decision making, the district engineer will adopt the other agency's EIS or portions of it and simultaneously or thereafter supplement it. The supplement cover sheet and summary will describe the basis for the Corps adoption. The other agency's EIS or portions thereof will be attached and circulated for review with the Corps supplement. Where another agency's EIS is adopted for purposes of a Corps decision on a proposed action, a Record of Decision will be prepared in accordance with § 230.12.

§ 230.22 Limitations on actions during the NEPA process.

Limitations on Corps action during the NEPA review process are discussed in § 230.17. State and local agencies and private applicants should be made aware of the early stage involvement provisions of 40 CFR 1506.1(b) with respect to the Corps foreseeable regulatory responsibilities (refer to Appendix B). If a district engineer decides to prepare a programatic EIS, the limitations set forth in 40 CFR 1506.1(c) will apply to the extent practicable, but are not binding unless the program EIS is legally required. District engineers will carefully review proposed interim actions to be undertaken while work on a program EIS is in progress so as not be prejudice the ultimate decision on the program.

§ 230.23 Predecision referrals.

If the district engineer determines after review of another agency's Final EIS that the proposed action would be environmentally unsatisfactory with respect to the Corps area of expertise or jurisdiction by law, the case will be sent through division to reach (DAEN-CWZ-P) not later than 15 days after the final EIS was filed for review and processing to CEQ. The referral must be delivered to CEQ not later than 25 days after the final EIS was filed. The referral shall only be used after timely, but unsuccessful efforts have been undertaken to resolve the issue with the other agency. Such advice and/or a request for additional information to permit an analysis of the proposed action associated with the Corps area of expertise or regulatory responsibilities shall be contained in the district engineers comments on the other agency's draft EIS. Every effort should be made to resolve the problem(s) prior to the preparation of the final EIS. However, if an agreement cannot be reached, the district engineer shall prepare the referral in accordance with the procedures outlined in 40 CFR 1504.3. Corps actions referred to CEQ under this procedure by another Federal agency or by EPA under Section 309 of the Clean Air Act (42 U.S.C. 7609) shall be transmitted immediately to (DAEN-CWZ-P) for further guidance. District engineers receiving potential referral advice or requests for additional information from another Federal agency in comments on a draft EIS, shall, to the extent practicable, provide the necessary information and/or attempt to resolve the differences prior to filing the final EIS on the proposed action.

§ 230.24 Agency decision points.

(a) *General.* The instructions contained in Appendix C discuss the timing and integration of EIS preparation and processing in relation to major decision points in the Corps Civil Works Program. For major decision points for regulatory permit actions see 33 CFR Part 325 and Appendix B. Analyses of environmental data obtained during the early stages of planning, project development, operations and maintenance and management actions will provide the reporting officer with a basis to make a determination of the significance of the proposed action and whether an EA, EIS or EIS supplement will be required. Where the district engineer determines that the proposed action will not have a significant effect on the environment based on the EA, the district engineer will sign the FONSI based on the completed EA. EA and FONSI prepared for actions other than regulatory which normally require an EIS (feasibility studies) or are without precedent shall be circulated for public review and comment for 30-days before the FONSI is signed by the reporting officer in accordance with 40 CFR 1501.4(e)(2). Determinations based on an EA are reversible should controversy or other circumstances occur which require an EIS or supplement to be prepared.

(b) *Feasibility Studies.* In the case of feasibility studies discussed in § 230.6, the environmental document is an integral part of the Main Report and circulated to agencies and the public for review. However, where an EIS is included within the Main Report, the EIS must be a self-contained document which can be read and understood without constant reference to the Main Report. This procedure insures that environmental data and analyses are given equal consideration

with other factors and are made available to agency decisionmakers at the time when they will be of most value in reviewing and deciding on a proposed action. The Main Report and EIS for Survey and legislative AE&D planning reports will accompany the Final Report of the Chief of Enigneers when the proposed action is forwarded for ASA (CW) and Executive review and ultimately to Congress. The Record of Decision will be signed by the S/A. DPR and AE&D planning reports approved at the OCE level will have the Director of Civil Works sign the Record of Decision. The Record of Decision for administrative AE&D planning reports will be signed by the Division Engineer.

(c) *Construction, O&M and Management Actions.* In the case of authorized and completed projects, environmental documents will be prepared, circulated for review and comment, and made available to agency decisionmakers for review (including comments received) prior to reaching a decision on the proposed construction, maintenance, real estate or management action. The Record of Decision as discussed in §230.12 will be signed by the Corps official approving the action after the final EIS or final EIS supplement has been on file for 30 days. When the district engineer determines that the proposed action will not have a significant effect on the environment based on the EA, the district engineer will sign the FONSI and approve the action based on the completed EA. No administrative action shall be taken on the proposed project until the Record of Decision or the FONSI has been signed.

§230.25 Environmental review and consultation requirements.

The following paragraphs list the principal environmental review and consultation requirements applicable to Corps Civil Works actions. In accordance with 40 CFR 1502.25, the following procedures outline how environmental review and consultation requirements may be undertaken concurrently with the circulation of the appropriate NEPA document. See Appendix A, paragraph 6b, for guidance on addressing environmental review and consultation requirements in feasibility studies and 33 CFR Parts 320 through 329 for Corps regulatory permits. To the maximum extent possible, the district engineer will undertake early coordination to insure that environmental reviews required by these laws are done concurrently with the preparation of the EA or draft EIS so that the results of these reviews are integrated with the EA or draft EIS.

(a) *Federal Statutes.* (1) *Preservation of Historical Archeological Data Act of 1974 (16 U.S.C. 469 et seq.) which amends the Act of June 27, 1960, also referred to as the "Reservoir Salvage Act of 1960, amended; National Historic Preservation Act of 1966, as Amended, 16 U.S.C. 470 et seq.; Executive Order 11593, Protection and Enhancement of the Cultural Environment, 13 May 1971.* District engineers shall undertake certain studies and coordinate with appropriate state historic preservation officers, the Heritage Conservation and Recreation Service, the Advisory Council on Historic Preservation, and other groups with cultural resources expertise to identify and determine potential effects of proposed Corps actions on significant cultural resources. The draft EIS or EA may serve as the document requesting consultation with the Advisory Council pursuant to Section 106 of the National Historic Preservation Act and other authorities, as appropriate. The results of the coordination and consultation related to cultural resources shall be discussed in the Final EIS or EA and noted in the Record of Decision of FONSI in accordance with ER 1105-2-460. In the case of regulatory permits, policies related to cultural resources are provided in Appendix C of 33 CFR Part 325.

(2) *Clean Air Act, as amended, (42 U.S.C. 7609).* District engineers shall provide the Regional Administrator(s) of EPA copies of Corps EIS and EIS supplements on proposed actions to obtain written views and comments on the environmental impact of any matter relating to EPA's authorities from the standpoint of public health or welfare or environmental quality under Section 309 of the Act and the determinations and findings required by Section 176(c) of the Act to assure

the conformity of Corps proposed actions to each state implementation plan (SIP). In the case of an EA and FONSI prepared for Corps actions, coordination with EPA is discussed in §230.10.

(3) *Clean Water Act of 1977, (Federal Water Pollution Control Act Amendments of 1972) 33 U.S.C. 1251 et seq.* Evaluation of the effects of the discharge of dredged or fill material into waters of the United States, including consideration of the Section 404(b)(1) Guidelines, shall be included in an EA, EIS or EIS Supplement prepared for all Corps actions in planning, design and construction where the recommended plan or approved project involves the discharge of dredged or fill material into waters or the United States. In the case of Survey Reports (optional) and Legislative and Administrative AE&D Planning and Design Reports, the Section 404 evaluation will be discussed briefly in the body of the EIS or EIS Supplement and included as Appendix to the Main Report. Compliance with the Act will be noted in the Record of Decision. This procedure will satisfy Section 404(r) of the Act, upon submittal of the EIS to Congress, in lieu of issuing a public notice and obtaining a state water quality certificate. The same procedure will apply to projects in a construction category except that the 404 evaluation will be included as an appendix to the EIS or EIS Supplement or submitted as a supplemental information report to a final EIS field after 5 September 1975. Refer to reference (bb) of §230.3 and interim Corps guidance for further guidance on applying Section 404(r) to proposed Corps actions.

In the case of a Survey Report where the Section 404 evaluation has not been completed (optional), this information will be noted in the conclusions section of the report and EIS or EA. In case of a project authorized by Section 201 of P.L. 89-298, where a state water quality certificate is required, the Section 404 evaluation will be included with the EIS and the document filed with EPA but can not be sent to Congress under provisions of Section 404(r). In EIS cases involving a continuing authority project where a state water quality certificate is required, the certificate must be obtained before a decision is made on the project and the Record of Decision is signed. States requiring Corps final project approval prior to issuing a certificate must be advised of the Corps policy in this matter. District engineers shall provide the state with necessary detailed information it may need to issue the certificate. Where an EA is prepared for Corps actions in post-authorization planning, design and construction, and the project involves the discharge of dredged or fill material into waters of the United States, the 404 evaluation will be included with the EA and circulated for review and comment. Should a FONSI be prepared, the 404 evaluation will also be included in the FONSI after obtaining a state water quality certificate and approval of the project. In the case of completed projects in the O&M category involving the discharge of dredged material into waters of the United States, compliance (partial, full, etc.) with Section 404, state water quality certification and disposal permit requirements will be noted in the FONSI or Record of Decision prepared for the action. However, the 404 evaluation need not be included as an appendix to the EA or EIS and can be processed after the NEPA document has been filed but prior to actual commencement of the action. In the case of regulatory permit actions, compliance shall be in accordance with applicable provisions of 33 CFR Part 320 *et seq.* and Appendix B of this regulation.

(4) *Coastal Zone Management Act of 1972, as Amended, 16 U.S.C. 1451 et seq.* Proposed Corps projects and activities significantly affecting land or water uses in the coastal zone of a state or territory must be coordinated with the appropriate state agency responsible for administering the state's approved coastal management program. Coordination should be initiated early in the planning or scoping process to insure compliance with the consistency provisions of the Act (Section 307). In the case of feasibility studies, the consistency determination shall be summarized in the Main Report and EIS or EA and included as an Appendix to Main Report. In other Corps ac-

tions, except regulatory permits, the consistency determination will be noted in the EIS or EA and included as an Appendix, if necessary. For regulatory permits, compliance with the Act will be in accordance with 33 CFR 325.2.

(5) *Endangered Species Act of 1973, as Amended, 16 U.S.C. 1531 et seq.* District engineers shall initiate early coordination with the appropriate Regional Director of the Fish and Wildlife Service (FWS) and/or National Marine FIsheries Service (NMFS) to determine if any listed endangered or threatened species or species proposed for listing or their critical habitat may be present in the area of the proposed Corps action. The results of this coordination and/or consultation as required by Section 7 of the Act, as amended, shall be discussed in the main report and included in the EA, final EIS or EIS supplement prepared for the proposed action. Copies of pertinent correspondence, biological assessments, opinions, consultants reports or other related information shall be provided as an Appendix to the Main Report or final EIS, as appropriate, with the conclusions and/or recommendations noted in the EIS and Record of Decision or FONSI, as appropriate. In the case of regulatory permits not requiring an EIS, the results of the coordination obtained by circulation of the public notice will be included within the EA prepared for the proposed permit action.

(6) *Estuary Protection Act (16 U.S.C. 1221 et seq.)* District engineers shall provide copies of EA or EIS on project plans and reports submitted to Congress affecting estuaries and their natural resources to the Department of the Interior for reviews and comment. The Secretary of the Interior has 90 days after receipt of plans and reports to make recommendations. This review can be accomplished when the project plans and reports and EA or EIS are circulated for Departmental (90-day) review.

(7) *Federal Water Project Recreation Act (16 U.S.C. 460-1-12 et seq.)* In planning Federal projects, district engineers shall give full consideration to opportunities afforded by the project for outdoor recreation and fish and wildlife enhancement. District engineers shall provide review copies of reports and accompanying EA or EIS to the Department of the Interior in regard to recreation and fish and wildlife activities for conformance with the comprehensive nationwide outdoor recreation plan formulated by the Secretary of the Interior.

(8) *Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.* District engineers shall initiate early coordination with the appropriate Regional Director of the Fish and Wildlife Service (FWS), the appropriate Regional Director of the National Marine Fisheries Service (NMFS) and the head of the agency responsible for fish and wildlife for the state in which the proposed action will occur. The results of this coordination shall be discussed in the EIS in order to identify the concerns of the fish and wildlife agencies. In the case of feasibility studies the final fish and wildlife report will be included as an Appendix to the final Main Report and EA or EIS when the reporting officer transmits the report to higher authority. All recommendations presented by the fish and wildlife agencies shall be addressed in the text of the main report or included in the EA or EIS. In other Corps actions the final fish and wildlife report (if applicable) will be discussed in the EA or final EIS and included as an Appendix to the EA or final EIS prepared for the action, except for regulatory permit actions which are coordinated and processed under provisions of 33 CFR 320.4(c). Planning aids and other detailed fish and wildlife data and information received from the FWS, NMFS or the state should be referenced in the report or EIS as appropriate and need not be circulated with the documents unless the material is needed to clarify issues or provide an administrative record having a bearing on the project.

(9) *Land and Water Conservation Fund Act (16 U.S.C. 4601 et seq.)* Requirements are similar to Federal Water Project Recreation Act which require coordination with Interior to review conformance with the comprehensive outdoor recreation plan formulated by Interior.

(10) *Marine Protection Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1401 et seq.* District engineers will be responsible for compliance with Section 102 Guidelines of the Act for proposed Corps actions involving the transportation of dredged material by vessel for the purpose of dumping it in ocean waters pursuant to Section 103 of the Act. Interim policy guidance for Corps studies and projects on this matter has been previously provided. Guidance for Corps operations and maintenance actions is provided in 33 CFR 209.145. Guidance for Corps regulatory permits is provided in 33 CFR Part 320 *et seq.* In the case of feasibility studies involving possible ocean dumping of dredged material, the evaluation of the need for ocean dumping including the availability of alternatives to ocean dumping will be incorporated into the main report as part of the multiobjective planning process and noted in the EIS. In other Corps actions, except regulatory permits, the evaluation and findings will be noted in the EIS and included as an Appendix to the EIS or EIS supplement. In the case of an EA, the evaluation and finding, together with pertinent correspondence will be included within the document in place of an EIS. Inclusion of the evaluation and findings in the EA or EIS documents for Corps studies and projects circulated for public review and comment will provide or satisfy the requirements of the opportunity for public review. For regulatory permits, compliance with the Act will be in accordance with 33 CFR Part 320 *et seq.* The public notice procedure used for regulatory permits will provide or satisfy the requirements of the opportunity for public review.

(11) *National Historic Preservation Act (16 U.S.C. 470a, et seq.)* See paragraph (a)(1) of this section.

(12) *National Environmental Policy Act (42 U.S.C. 4321 et seq.)* District engineers will show compliance by indicating partial compliance when the draft EIS or EIS supplement is filed and full compliance when the Record of Decision is signed. In the case of an EA, full compliance will be noted when the FONSI is signed.

(13) *River and Harbor Act (33 U.S.C. 401 et seq.)* No requirements for Corps projects or programs authorized by Congress. (Requirements of the Act fulfilled by Corps planning actions)

(14) *Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.* No requirements for Corps activities.

(15) *Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.)* District engineers shall, as part of the normal planning and environmental analysis process, consult with the regional office of the Heritage Conservation and Recreation Service (HCRS) prior to taking actions which could effectively foreclose the possible designation of rivers identified in the nationwide inventory as wild, scenic or recreational. District engineers should follow the consultation procedures outlined in CEQ Memorandum, reference (aa) of § 230.3 and regularly request updates of the list of rivers in the inventory from the appropriate regional office of HCRS. If a proposed Corps action is located on or may affect a designated river, the district engineer shall examine reasonable alternative uses of the river and consult with HCRS on the study or program activities that are underway. The results of this consultation shall be discussed in the report and included in the accompanying EA, EIS or EIS supplement prepared for the proposed action. Compliance will be noted in the EA or EIS and FONSI or Record of Decision, as appropriate. In the case of regulatory permit actions, compliance shall be in accordance with 33 CFR Part 320 *et seq.*

(b) *Executive Orders*—(1) *Executive Order 11988, Floodplain Management, 24 May 1977.* Policy guidance implementing the executive order for all Corps Civil Works actions is contained in ER 1165-2-26, dated 15 May 1979. In the case of feasibility studies, implementation of the Executive Order will be incorporated into the Main Report as part of the multiobjective planning process, noted in the EIS and included as an Appendix to the main report, if necessary. Existing policies and procedures related to regulatory permits 33 CFR Part 320 *et seq.* fulfill the requirements of the Executive Orders and should continue to be followed. For all other Corps actions the

results of the required assessment and evaluation together with the determination and finding shall be discussed briefly in the EA or EIS and included as an Appendix, if necessary.

(2) *Executive Order 11990, Protection of Wetlands, 24 May 1977.* Reporting officers will be responsible for compliance with applicable provisions of the Executive Order for projects and programs for which a draft or final EIS is filed on or after 1 October 1977. Interim policy guidance on this matter has been previously provided. In the case of the feasibility studies the results of the analyses and findings related to wetlands will be incorporated into the Main Report as part of the multiobjective planning process, noted in the EA or EIS and included as an Appendix to the Main Report, if necessary. In other Corps actions, except regulatory permits, the analyses and findings will be discussed in the EA or EIS and included as an Appendix, as appropriate. Inclusion of the analyses and findings in the EIS documents for Corps studies and projects circulated for public review and comment will satisfy the opportunity for early public review requirements of Section 2(b) of the Executive Order. For regulatory permits, compliance with the Executive Order will be in accordance with 33 CFR Part 320 *et seq.* The opportunity for early public review through publication of a Public Notice will satisfy the requirements of this section in the case of regulatory permits.

(3) *Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979.* General policy guidance for all Department of Defense components is contained in the Department of Defense final rules implementing Executive Order 12114 published in the FEDERAL REGISTER of 12 April 1979 as 32 CFR Part 197. Procedural requirements for Corps Civil Works studies and projects are discussed below. Procedural requirements for Corps regulatory permit actions having significant effects on the environment outside of the United States are discussed in 33 CFR Part 322.

(i) The district engineer through the division engineer responsible for the activity will notify DAEN-CWP-E, -C, or -W as appropriate, of an impending action which may impact on another country and that environmental studies are necessary to determine the extent and significance of these impacts. The district engineer will inform DAEN-CWP whether entry into the country to study the base condition is necessary.

(ii) DAEN-CWP will notify the State Department, Office of Environmental and Health (OES/ENH) of the district engineers concern, and whether a need exists at this point to officially notify the foreign nation of our intent to study potential impacts. Depending on expected extent and severity of impacts, or if entry is deemed necessary, the matter will be referred to the appropriate foreign desk for action.

(iii) As soon as it becomes evident that the impacts of the proposed actions are considered significant, DAEN-CWP will notify the State Department. The State Department will determine whether the foreign embassy needs to be notified, and will do so if deemed appropriate requesting formal discussions on the matter. When the International Joint Commission (IJC) or the International Boundary and Water Commission, United States and Mexico (IBWC) is involved in a study, the State Department should be consulted to determine the foreign policy implications of any action and the proper cause of action for formal consultations.

(iv) Any press releases or report documents dealing with impact assessments in foreign nations should be made available to the appropriate foreign desk at the State Department for clearance and coordination with the foreign embassy prior to public dissemination.

(v) Assessments of impacts of Civil Works projects on foreign countries should not be incorporated into any EIS, but the EIS will include notation that an assessment of impacts on foreign countries has been made in compliance with the Executive Order and will be available (as cleared by the Foreign Embassy involved) at the field office for inspection.

(c) *Executive Memorandum.* (1) *CEQ Memorandum, August 11, 1980, Analysis of Impacts on Prime or Unique Ag-*

ricultural Lands in Implementing NEPA. District engineers shall be responsible for including an analysis of the effects of a proposed action on prime or unique agricultural lands in the course of preparing environmental documents. Technical data and assistance regarding these lands may be obtained by contacting the appropriate Chairperson of the USDA Land Use Committee. District engineers should follow the coordination procedures outlined in this updated memorandum including the distribution of Corps NEPA documents to USDA for review and comment. In the case of feasibility studies, the analysis will be incorporated into the Main Report and discussed in the appropriate sections of the EA or EIS. In all other Corps actions, the analysis of impacts will be discussed in the appropriate sections of the EA or EIS.

(2) *CEQ Memorandum, August 10, 1980, Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory.* Refer to § 230.25(a)(15) for consultation requirements.

(d) *Other.* Other environmental treaties, laws, Executive Orders, regulations etc. as may be required by the proposed action.

[45 FR 56761, Aug. 25, 1980; 46 FR 14745, Mar. 2, 1981]

§ 230.26 General considerations in preparing Corps EIS.

EIS for Corps Civil Works activities shall be prepared and processed in accordance with Appendix A through D and pertinent Sections of this regulation, CEQ regulations implementing the procedural provisions of NEPA (40 CFR Parts 1500 through 1508), and the following:

(a) *Interdisciplinary Preparation.* EIS shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (40 CFR 1502.6). Environmental investigations should be undertaken simultaneously with and to the same depth and scope as other study or project related investigations. EIS shall be coordinated with and reviewed by district and division counsel. A list of the names, expertise, experience, professional discipline and role of the persons who were primarily responsible for the preparation of the EIS shall be included. See paragraph 6h of Appendix A for suggested guidance on format (40 CFR 1502.17).

(b) *Incorporation by Reference.* EIS shall incorporate material by reference wherever possible in accordance with 40 CFR 1502.21. The incorporated material must be cited in the EIS and its contents briefly described. Footnotes should be used rarely; only where their use greatly aids the reader's understanding of the point discussed. Citation in the EIS of material incorporated by reference should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the EIS. The list of references will be placed at the end of the EIS. Only information sources actually cited in the text should appear in the reference list. The reference list shall include the author's name and the date and title of the publication. Personal communications should also be listed with the person's employing office, date of communication and type of communication (e.g. letter, telephone, interview, etc.). Cited material must be reasonably available for inspection by interested parties within the time allowed for comment (40 CFR 1502.21).

(c) *Incomplete or Unavailable Information.* Refer to 40 CFR 1502.22 (a) and (b) for guidance in preparing an EIS when there are data gaps or lack of information relevant to significant adverse impacts bearing on the decision on the action. Particular attention shall be given to the requirement in the case of projects where relevant information essential to a reasoned choice among alternatives is not known and the overall costs of obtaining it are either exorbitant or beyond existing scientific capability. In such situations the EIS should include a worst case analysis.

(d) *Methodology and Scientific Accuracy.* Refer to 40 CFR 1502.24. Methodologies, techniques, and other scientific sources used to arrive at information presented in the EIS or relied upon for conclusions shall be cited at appropriate locations in the EIS and included in the list of references.

(e) *Cost-Benefit Analysis.* Refer to 40 CFR 1502.23. In the case of feasibility studies, limited plan economic data will be displayed for the final array of alternatives in accordance with Appendix A. For other Corps actions, limited project economic data relevant to the choice among alternatives will be displayed, as appropriate (e.g. cubic yard cost for O&M dredging). When a cost-benefit analysis is prepared, the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities shall be discussed. See Appendix B for regulatory permits.

(f) *Contractual Relationships.* The use of outside professional services (contractors) for the preparation of basic data for EA and EIS for Corps actions shall be in accordance with 40 CFR 1506.5(b) and (c). The reporting officer shall assist the contractor in the preparation of the document and independently evaluate and be responsible for its scope, content and accuracy. The names of the person(s) responsible for this independent evaluation and contractor participants shall be included in the list of principal preparers as discussed in paragraph 6h of Appendix A. Reporting officers shall prepare and have contractors execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project. See Appendix B for regulatory permits.

(g) *Use of Regulation.* This regulation shall become effective on publication and will be used for the preparation and processing of all NEPA related documents prepared for Civil Works activities except for the requirements of publishing a notice of intent to prepare a draft EIS (ER 200-2-1) which became effective 12 February 1979. Draft EIS and draft supplements filed with EPA after 30 July 1979 must comply with these regulations. Final EIS and final supplements should, but need not comply with these regulations if the draft EIS or draft supplement for the proposed action was filed with EPA before 30 July 1979 (40 CFR 1506.12).

APPENDIX A—FEASIBILITY STUDIES: ORGANIZATION AND CONTENT OF EIS'S AND SCOPING

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1. *Purpose.* This appendix provides guidance on the organization and content of Environmental Impact Statements (EIS) incorporated into Corps feasibility reports, including Survey Reports, Phase I General Design Memorandum (GDM) and Detailed Project Reports (DPR's). It also provides guidance on the timing of Corps feasibility study actions to meet CEQ's scoping requirements.

2. *References.*

a. 40 CFR Parts 1500 through 1508.
b. ER 11-2-220.
c. ER 18-2-2.
d. ER 200-2-1.
e. ER 1105-2-10.
f. ER 1105-2-32.
g. ER 1105-2-50.
h. ER 1105-2-129.
i. ER 1105-2-200.
j. ER 1105-2-210.
k. ER 1105-2-220.
l. ER 1105-2-230.
m. ER 1105-2-240.
n. ER 1105-2-250.
o. ER 1105-2-460.
p. ER 1105-2-502.
q. ER 1105-2-800.
r. ER 1105-2-920.
s. ER 1105-2-921.

3. *Background.* a. The Corps multiobjective planning process (ER 1105-2-200 series) integrates the substantive requirements of NEPA, the U.S. Water Resource Council's Principles and Standards (P&S), and related environmental policies. Thus, feasibility reports documenting the results of studies conducted in accordance with the ER 1105-2-200 series will contain the analysis re-

quired by NEPA as integral parts of the report. The organization of feasibility reports reinforces this concept by including a concise EIS within the Main Report (ER 1105-2-920).

b. The EIS must be clearly identified on the front cover of the feasibility report document and placed directly behind the last page of the Main Report. The EIS is a part of the Main Report and therefore will not be identified as an attachment or appendix. For ease of identification the EIS should be setout by the use of colored paper. It shall be presented as an analytical, self supporting document which informs decisionmakers and the public of the reasonable alternatives and their environmental effects and analyze measures which would avoid or minimize adverse impacts or enhance the quality of the human environment. Material detailed in the Main Report may be incorporated by reference in the EIS where the effect is to avoid duplication without sacrificing the self-supporting nature of the document and the ability of the agencies and the public to review and comment on the EIS. However, a reviewer should not have to refer to the Main Report or appendixes to have a clear understanding of the alternatives and their environmental impacts. References are to be provided should the reviewer require additional detailed technical information relative to the environmental consequences of the proposed action and reasonable alternatives considered.

c. The following paragraphs present the page limit, organization and content requirements for EIS included in feasibility reports, and guidance on scoping requirements in feasibility studies. Requirements of 40 CFR Parts 1500 through 1508 are incorporated by reference where applicable.

4. *Page Limits.* a. Reference: 40 CFR 1500.4(a), 1502.7, 1502.11, 1502.12, 1502.15, and 1502. 17.

b. EIS prepared for feasibility studies will not duplicate lengthy documentation of the substantive requirements of NEPA contained elsewhere in the Main Report and Appendixes. However, pertinent information discussed in other sections of the main report and appendixes, may, by necessity, be duplicated in the alternative section of the EIS to serve as the analytical focal point of the document in order to clearly define the environmental issues and provide a basis for choice by the decisionmaker and the public. Based on an OCE analysis, and in accordance with the objective in the NEPA regulations to reduce paperwork, the average length of an EIS included in Feasibility Reports should not normally exceed 50 pages (single-spaced typed, pages numbered sequentially).

5. *EIS Organization.* a. Reference: 40 CFR 1502.10.

b. The EIS will follow the format in Section 1502.10. Each paragraph in each section of the text of the EIS will be numbered for ease of reference.

6. *EIS Contents*—a. *Cover Sheet.* (1) Reference: 40 CFR 1502.10(a) and 1502.11.

(2) An example cover sheet is presented at Table 1.

(3) A statement shall be included on the cover sheet which states that information, displays, etc., referred to in the Main Report or appendixes is incorporated by reference into the EIS.

(4) In all cases the estimated date for comments shall include sufficient time for mailing, receipt and preparing F. R. notice by EPA and required 45-day review for draft EIS. In the case of the final EIS, leave the date blank. The appropriate Corps office filing the final EIS will date stamp the document.

b. *Summary.* (1) Reference: 40 CFR 1502.2(d), 1502.10(b), 1502.12, 1502.16(c), 1502.20, 1502.25, 1506.2(d), 1506.3(d) and 1506.10(b)(2).

(2) This chapter will inform the reader of the major factors which were considered in and influenced planning related decisions. It shall be presented in the following four discussions.

(3) Major Conclusions and Findings. Present the rationale for the study's NED Plan, EQ Plan (or least environmentally damaging plan), and tentatively selected plan in a Draft EIS: the rationale for study's NED Plan, EQ Plan (or least environmentally damaging plan), selected plan and recommended plan in a Final EIS: and other major conclusions and findings of the district engineer (for example, Section 404, E.O. 11988 and E.O. 11990 findings).

(4) Area of Controversy. Describe the issues that were the subject of major disagreement among public interests during the course of the study. Describe the outcome of any resolved controversies.

(5) Unresolved Issues. Describe the unresolved major disagreements among study area interests and actions proposed or taken to resolve disagreements.

(6) Relationship to Environmental Protection Statutes and Other Environmental Requirements. Describe the relationship of each plan included in the Stage 3 final array of alternatives to the requirements of environmental laws, executive orders and other policies; the objectives of Federal, State and local land use plans, policies and controls applicable to the study area and other related State and Local plans and laws; and any Federal requirements for permits, license and other entitlements needed to implement the detailed plans. An Example similar to that presented at Table 2 is recommended for this presentation.

(7) References to adoption of a previously prepared EIS and supplementing an EIS under the tiering concept (see 40 CFR 1502.20), and references to an EIS meeting the criteria of 30 CFR 1506.3(d) or 1506.10(b)(2) should be included in this chapter, as appropriate.

c. *Table of Contents.* (1) Reference: 40 CFR 1502.10(c).

(2) Even though the EIS is included as a part of the Main Report, page numbering of the EIS shall be independent of the Main Report. EIS pages will be numbered sequentially as EIS-1, EIS-2, EIS-3, . . . etc.

d. *Need for and Objectives of Action.* (1) Reference: 40 CFR 1502.4(a), 1502.10(d) and 1502.13.

(2) This chapter will explain concisely to the reader why the Corps became involved in the study and what public concerns and consequent planning objectives were identified as the basis for plan formulation. It shall be presented in the following three discussions.

(3) Study Authority. Identify the study's authorizing document and summarize the Congressional intent for undertaking the study.

(4) Public Concerns. Describe the public concerns and related resource management needs (problems and opportunities) which were identified in the study.

(5) Planning Objectives. State the planning objectives which were derived from the aforementioned resource management needs and employed in plan formulation.

e. *Alternatives.* (1) Reference: 40 CFR 1502.1, 1502.2, 1502.2(e), 1502.4(a), 1502.10(e), 1502.14, 1502.16(h), 1502.23, 1505.1(e) and 1508.27.

(2) This chapter is the heart of the EIS. It will identify and describe all reasonable and feasible alternatives considered, and the assessment and evaluation of the most responsive solutions (detailed plans). It shall be presented in the following discussions.

(3) Plans Eliminated from Further Study. Briefly describe each plan considered in late Stage 2 planning but not included in the Stage 3 final array of alternatives. Present the rationale for eliminating such plans.

(4) Without Conditions (No Action). Briefly describe the without conditions that are expected to occur in the absence of any Federal action to address the planning objectives. If non-Federal actions to address the planning objectives are included in the without conditions assumptions (as in the case of water supply and power-related planning objectives), describe such actions and identify the agency(ies) or group(s) responsible for their implementation and any mitigation requirements of such actions.

(5) Plans Considered in Detail. Briefly describe each plan included in the Stage 3 final array of alternatives. Summarize each plan description, implementation responsibilities (Federal and non-Federal), and any mitigation requirements (including fish and wildlife "compensation," cultural resources "data recovery," endangered species "conservation," etc.). Identify the designated NED and EQ Plans (or least environmentally damaging plan), and the selected, or tentatively selected, plan.

(6) Comparative Impacts of Alternatives. Describe in a comparative form, the base and without condition, the impacts of the detailed plans on significant resources, and plan economic characteristics (i.e. total costs, net benefits, benefit-cost ratio). An example similar to that presented at Table 3 is recommended for this presentation. However, where a comparative table is used, the Environmental Effects section shall contain a detailed analysis of the environmental consequences of each alternative including the proposed action and shall provide sufficient back-up analysis for the comparative table.

(7) All discussions concerning the without condition and Stage 3 final array of alternatives must be presented consistently and sufficiently in the same level of detail such that any option could be selected based on the presentation. This approach will aid the decision-making process by "sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public" (40 CFR 1502.14) and minimize document revision should the selected plan or recommendations change.

(8) Plan location maps, section views, the study's System of Accounts and other graphics and tables presented elsewhere in the Main Report or Appendixes should be referenced in the EIS to avoid duplication.

f. *Affected Environment.* (1) Reference: 40 CFR 1502.10(f) and 1502.15.

(2) This chapter will briefly describe study area existing and without conditions in the following discussions:

(3) Environmental Conditions. Briefly describe the major characteristics of the study area's natural and human resources to provide the reader with a general understanding of physical, ecological, social, cultural and economic conditions. This discussion will normally not exceed one page.

(4) Significant Resources. Describe each significant resource included in the Comparative Impacts of Alternatives discussion, including its location, quantity and quality. This discussion should explain to the reader what is significant and why it is significant. In identifying resources to be included in this discussion, those specifically mentioned in Section 122, 1970 R & HA, PL 91-611 will be addressed. If they are found not significant in the study area this fact will be noted. In further identifying and characterizing resources, consideration should be

given to the following criteria for resource significance:

(a) Resources identified in the laws, regulations, guidelines or other institutional standards of national, regional and local public agencies should be considered significant (e.g. sites listed on the National Register of Historic Places, species included in State "endangered species" lists, natural open space identified in local land use plans, etc.) Resources identified in the guidelines of certain private groups may also be considered (e.g. bird species on the National Audubon Society's "Blue List", historic properties of the National Trust for Historic Preservation, etc.).

(b) Resources meeting certain study-specific technical criteria for measuring characteristics that may be critical to resource existence should be considered significant. Technical criteria may include, but are not limited to, measurement of resource scarcity, fragility, resiliency, reproducibility and tolerance. For example, spawning habitat for a study area fish species may be abundant at a regional level but scarce in a local study area.

(c) Resources specifically identified as a concern by public interests should be considered significant. For example, a local farm association may identify certain tracts of productive agricultural land as important to the community's economic well-being.

(d) Resources which, if effected by a plan, would violate an institutional standard, meet a study-specific technical criterion, or become the subject of public concern should be considered significant. For example, a currently abundant game habitat could become scarce due to the effect of a certain plan.

g. *Environmental Effects.* (1) Reference: 40 CFR 1502.9(a), 1502.10(g), 1502.16 and 1502.22.

(2) This chapter will briefly describe the effects of each detailed plan on the previously described significant resources. Its purpose is to provide the reader with a detailed analysis of the impacts described in the Comparative Impacts of Alternatives discussion. Where a comparative table is used in the Comparative Impacts of Alternatives Section, the Environmental Effects section shall contain a detailed analysis of the environmental consequence of each alternative including the proposed action and shall provide sufficient back-up analysis for the comparative table.

(3) Discussion in this chapter should be subheaded with the names of the previously described significant resources to assist the reader in quick and easy reference. For example, if a study's significant resources were identified as shown at Table 3 (listed as column headings), the subheadings in this chapter would be "Blue River Wetlands," "Fort America Historic Site," etc. When using this approach, the discussion under each subheading will describe the effects of each plan on the subject resource. Plans with no effect on a resource should be noted.

(4) If an effect is described as being adverse, the discussion of that effect shall include an indication of the completeness and availability of information in accordance with 40 CFR 1502.22. If information related to an adverse effect meets the criteria stated in 40 CFR 1502.22(b)(1) and (2), the discussions required in 1502.22(b) shall be included in the EIS before it is made available to the public.

(h) *List of Preparers.* (1) Reference: 40 CFR 1502.6, 1502.10(h), 1502.17 and 1507.2(a).

(2) An example List of Preparers is presented at Table 4. The study manager, an EIS coordinator and any consultant(s) should be identified in the list, as appropriate. Only people primarily responsible for preparing the document will be listed.

(i) *Public Involvement.* (1) Reference: 40 CFR 1502.9(b), 1502.10(i), 1503.1, 1503.4(a) and (b), 1506.6 and 1506.9.

(2) This chapter will briefly describe public involvement in the study to inform the reader of how public views guided and were incorporated into the study's decision-making process. It shall be presented in the following four discussions.

(3) Public Involvement Program. Briefly describe the means used to involve the public in the study and the major results of such involvement, including scoping activities.

(4) Required Coordination. Briefly describe any remaining required coordination with other agencies or groups, particularly coordination that is to be satisfied by circulation of the EIS for review and comment.

(5) Statement Recipients. List agencies, groups and individuals to whom copies of the EIS are sent. If a list of individuals receiving the EIS is extensive the word "Individuals" may be entered at the end of the list, followed by a reference to the Report Appendix and page number(s) presenting the full list of individuals.

(6) Public Views and Responses. In a draft statement, briefly describe public views that had a major influence on the study and how such views are incorporated into the study's decision-making process. In a final statement, include this draft statement discussion and a brief discussion of all substantive comments received on the draft which resulted in major changes in the study's decision factors (as described in the EIS Chapter 1 Summary) or those items specified in 40 CFR 1503.4(a)(1)–(3) and (5). Such changes should also be noted in appropriate discussions elsewhere in the final statement. The discussion will include references to

other paragraphs and pages in the Main Report and Appendixes which present more thorough analyses of EIS comments and the district's responses, and the full text of comments received. Copies of comments shall not be included directly in the EIS but rather included in the Public Views and Responses Appendix in accordance with ER 1105-2-920, Appendix B, paragraph 3b(1).

j. *Index, References and Appendixes.* (1) Reference: 40 CFR 1500.4(j), 1502.10(j) and (k), 1502.18, 1502.21 and 1506.4.

(2) An index, list of references and appendixes will be combined as shown at table 5. The purpose of the table is to provide the reader with an alphabetized subject index with references to the EIS Main Report and Report Appendixes for each subject.

(3) Inclusion of a reference in the table will constitute incorporation of the cited material into the EIS by reference. No other lists of reference, bibliographies or other appendixes shall be included in the EIS.

7. *Scoping*—a. *General.* (1) Reference: 40 CFR 1501.4(d), 1501.7, 1507.3(e), 1508.22 and 1508.23.

(2) CEQ's NEPA regulations state: "As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (1508.22) in the *Federal Register* except as provided in 1507.3(e)" (40 CFR 1501.7). The Notice of Intent shall, in part, "Describe the proposed action and possible alternatives" (40 CFR 1508.22(a)). CEQ's NEPA regulations also state:

"Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by 1501.7 may be published at a reasonable time in advance of preparation of the draft statement." (40 CFR 1507.3(e))

(3) In feasibility studies, a selected (or tentatively selected) plan is not identified until Stage 3 planning, prior to Milestone 6. Inasmuch as Milestone 6 is accomplished upon the reporting officer's submittal of a Draft Report (including a Draft EIS, as necessary) to higher authority, a Notice of Intent must be issued sufficiently in advance of Milestone 6 to allow adequate time for the EIS scoping process. The earliest prior time when a Notice of Intent could be issued would be in late Stage 2, following the completion of Milestone 5, when the reporting officer and higher authority have concurred in the final array of alternatives to be studied in detail during Stage 3 planning. While a single plan will not have been selected at this time, a "proposal" as defined in 40 CFR 1508.23, will have been identified. The "proposal" will be the final array of alternatives, one of which usually may be designated the selected plan (prior to Milestone 10). For feasibility studies, this "proposal" should be described in the Notice of Intent, Summary Items 1 and 2 required in ER 200-2-1, Appendix A. Publication of a Notice of Intent following Milestone 5 is consistent with the provisions of 40 CFR 1501.7, 1507.3(e) and related CEQ requirements.

(4) The district engineer may elect to publish a Notice of Intent following Milestone 5 but prior to the Formulation Stage Public Meeting if it is determined that a "scoping meeting" will be conducted and that such a meeting should be combined with an otherwise required public meeting. "Scoping meetings" are not required but may be conducted at the discretion of the district engineer.

(5) The intent of the scoping process is not limited to the preparation of EIS's in feasibility studies. Many of specific requirements included in CEQ's scoping process were integral parts of feasibility planning prior to promulgation of 40 CFR Parts 1500 through 1508. These requirements, including the need for early and ongoing public participation in all aspects of the study, will continue to be met as a normal planning function prior to the publication of a Notice of Intent and the subsequent initiation of the formal EIS scoping process.

b. *Timing of Feasibility Study Actions to Meet Scoping Requirements.* The specific requirements of the scoping process, as defined in 40 CFR 1501.7, should be accomplished in accordance with the following paragraphs to the extent practicable. Cited milestones should be adjusted for Phase I studies in accordance with ER 18-2-2. Adjustments should also be considered for Continuing Authorities Studies where milestones are not applicable and planning Stages 2 and 3 may be combined. Scoping actions conducted at the discretion of the reporting officer are indicated by an asterisk (*).

(1) *Early Stage 1, following Milestone 1.* The following actions are taken (and continued or repeated as necessary throughout planning) with respect to environmental considerations in the study:

(a) Invite public participation (40 CFR 1501.7(a)(1)).

(b) Determine environmental scope and significant issues to be analyzed (40 CFR 1501.7(a)(2)).

(c) Eliminate not significant and previously covered environmental issues (40 CFR 1501.7(a)(3)).

(d) Indicate other related environmentally documents (40 CFR 1501.7(a)(5)).

(e) Hold a "scoping meeting" (40 CFR 1501.7(b)(4)).*

(2) *Stage 1, prior to Milestone 2.* The following actions are taken (and continued or repeated as necessary throughout planning)

with respect to environmental considerations in the study.

(a) Allocate assignments for environmental analyses and reports (40 CFR 1501.7(a)(4)).

(b) Identify other environmental review and consultation requirements (40 CFR 1501.7(a)(6)).

(c) Indicate timing relationships between environmental analyses and planning-decisionmaking (40 CFR 1501.7(a)(7)).

(d) Set time limits (study schedule) (40 CFR 1501.7(b)(2)).*

(3) *Early Stage 2, following Milestone 2.* "Scoping" determinations can be revised at this or at any subsequent time whenever it is necessary to do so (40 CFR 1501.7(c)).

(4) *Late Stage 2, following Milestone 5, usually prior to the Formulation Stage Public Meeting.* A Notice of Intent may be published at this time or any subsequent time prior to Stage 3, Milestone 6 (40 CFR 1501.7). Publication of a Notice of Intent will initiate the formal EIS scoping process.

(5) *Late Stage 2, following Milestone 5, in conjunction with the Formulation Stage Public Meeting.* An EIS "scoping meeting" may be conducted in conjunction with the Formulation Stage Public Meeting or any subsequent time prior to Stage 3, Milestone 6 (40 CFR 1501.7(b)(4)).*

(6) *Stage 3, prior to Milestone 6.* The following actions are taken with respect to environmental considerations in the EIS:

(a) Determine scope and significant issues to be analyzed (40 CFR 1501.7(a)(2)).

(b) Eliminate not significant and previously covered issues (40 CFR 1501.7(a)(3)).

(c) Allocate assignments for EIS preparation (40 CFR 1501.7(a)(4)).

(d) Indicate other related environmental documents (40 CFR 1501.7(a)(5)).

(7) *Not Applicable.* The following scoping requirements are met by previously established requirements and, therefore, are not accomplished by a particular action in planning during any given study:

(a) Set page limits (40 CFR 1501.7(b)(1))*; page limits are established in 40 CFR 1502 and ER 200-2-2.

(b) Set time limits (40 CFR 1501.7(b)(2))*; EIS review time limits are established in 40 CFR 1506.10 and ER 200-2-2.

(c) Adopt procedures for combining assessment and scoping requirements (40 CFR 1501.7(b)(3))*; combined impact assessment, public involvement and study management processes are established in the ER 1105-2-200 series and supporting regulations.

TABLE 1—*Draft Coversheet Environmental Impact Statement*

Proposed Plan for Recreational Navigation and Wetland Habitat at Port Anytown American County, Va.

The responsible lead agency is the U.S. Army Engineer District, Gotham. The responsible cooperating agency is the U.S. Fish and Wildlife Service.

Abstract: Port Anytown is a small community in American County at the mouth of the Blue River. The Gotham District has investigated public concerns of the Port Anytown study area related to inadequate facilities for recreational navigation and the decline of the Blue River wetlands. Of the eleven plans initially considered, four were selected for detailed study. Plan 1, consisting of navigation channels and extensive breakwaters, would meet all navigation needs and destroy the wetlands. Plan 2, consisting of navigation channels and wetland acquisition, would meet some navigation needs and preserve the wetlands. Plan 3, consisting of wetland acquisition and management would not meet navigation needs and enhance the wetlands. Plan 4, consisting of navigation channels, limited breakwaters and wetlands acquisition, would meet most navigation needs and preserve the wetlands. Plan 4 has been tentatively selected based on its performance in addressing the identified public concerns and its net positive contributions to the goals of National Economic Development and Environmental Quality.

Send your comments to the district engineer by 1 January 1980. If you would like further information of this statement, please contact: Mr. John Smith, U.S. Army Engineer District, Gotham, 100 Main Street, Gotham, Virginia 10101, Commercial Telephone: (800) 555-1212, FTS Telephone: 555-1212.

NOTE: Information, displays, maps, etc. discussed in the Port Anytown Main Report are incorporated by reference in the EIS.

TABLE 2—RELATIONSHIP OF PLANS TO ENVIRONMENTAL REQUIREMENTS PROTECTION STATUTES AND OTHER ENVIRONMENTAL REQUIREMENTS

[Name of selected, or tentatively selected, plan]

Federal Statutes	Plan 1	Plan 2	Plan 3	Plan 4
Archeological and Historic Preservation Act, as amended, 16 U.S.C. 469*et seq.*	Partial	Partial	Partial	Partial
Clean Air Act, as amended, 42 U.S.C. 7401,*et seq*	Full	Full	Full	Full.

TABLE 2—RELATIONSHIP OF PLANS TO ENVIRONMENTAL REQUIREMENTS PROTECTION STATUTES AND OTHER ENVIRONMENTAL REQUIREMENTS—Continued

[Name of selected, or tentatively selected, plan]

Federal Statutes	Plan 1	Plan 2	Plan 3	Plan 4
Clean Water Act, as amended (Federal Water Pollution Control Act), 33 U.S.C. 1251*et seq.*	Full	Full	Full	Full.
Coastal Zone Management Act, as amended, 16 U.S.C. 1451,*et seq.*	N/A	N/A	N/A	N/A.
Endangered Species Act, as amended, 16 U.S.C. 1531*et seq.*	Full	Full	Full	Full.
Estuary Protection Act, 16 U.S.C. 1221,*et seq*	N/A	N/A	N/A	N/A.
Federal Water Project Recreation Act, as amended, 16 U.S.C. 460-1(12),*et seq.*	Full	Partial	Full	Partial.
Fish and Wildlife Coordination Act, as amended, U.S.C. 661,*et seq.*	Etc	Etc	Etc	Etc.
Land and Water Conservation Fund Act, as amended, 16 U.S.C. 4601—4601-11*et seq.*				
Marine Protection, Research and Sanctuaries Act, 22 U.S.C. 1401*et seq.*				
National Historic Preservation Act, as amended, 16 U.S.C. 470a,*et seq.*				
National Environment Policy Act, as amended, 42 U.S.C. 4321,*et seq.*				
Rivers and Harbors Act, 33 U.S.C. 401*et seq*				
Watershed Protection and Flood Prevention Act, 16 U.S.C. 1001,*et seq.*				
Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271,*et seq.*				
Etc				
Executive Orders, Memoranda, etc.:				
Floodplain Management (E.O. 11988)				
Protection of Wetlands (E.O. 11990)				
Environmental Effects Abroad of Major Federal Actions (E.O. 12114).				
Analysis of Impacts on Prime and Unique Farmlands (CEQ Memorandum, 30 Aug 76).				
Etc				
State and Local Policies:				
(List appropriate State and local policies and laws, e.g., a State "NEPA").				
Land Use Plans:				
(List appropriate Federal, State and local land use plans, policies and control not previously listed).				
Required Federal Entitlements:				
(List Federal permits, licenses and other entitlements needed to implement the plan, e.g., NPDES permit from EPA).				

NOTES: For each item listed, enter one of the following:

a. *Full Compliance.* Having met all requirements of the statute, E.O. or other environmental requirement for the current stage of planning (either pre or postauthorization).

b. *Partial Compliance.* Not having met some of the requirements that normally are met in the current stage of planning. Partial compliance entries should be explained in appropriate places in the report and/or EIS and referenced in the table.

c. *Non-Compliance.* Violation of a requirement of the Statute, E.O. or other environmental requirement. Non-compliance entries should be explained in appropriate places in the report and/or EIS and referenced in the table.

d. *Not Applicable.* No requirements for the statute, E.O., or other environmental requirement for the current stage of planning.

TABLE 3—COMPARATIVE IMPACTS OF ALTERNATIVES

[Name of selected, or tentatively selected, plan]

Base condition and alternatives	Blue River wetlands	Fort America historic site	Endangered yellow trout habitat	0Blue River class "A" water quality	Marine-related employment
Base condition	Available: 1,000 acres.	Available: site on National Register of Historic Places (NRHP).	Available: 10 acres.	Available: 15 river-miles.	Available: 10 full-time equivalent (FTE) employees.
Without condition (No action).	Available: 200 acres. Impact: 0 acres.	Available: site on NRHP. Impact: None year.	Available: 10 acres. Impact: 0 acres/year.	Available: 10 river-miles. Impact: 0 river-miles/ year.	Available: 10 FTE employees. Impact: 0 FTE employees/ year.
Plan 1	Available: 0 acres. Impact: −350 acres/year.	Available: site on NRHP. Impact: loss of base condition visual setting due to unavoidable introduction of visible elements.	Available: 0 acres. Impact: −10 acres/year.	Available: 0 river-miles. Impact: −10 river-miles/ year.	Available: 40 FTE employees. Impact: +27.5 FTE employees/year.
Plan 2	Available: 200 acres. Impact: 0 acres/year.	Available: site on NRHP. Impact: none.	Available: 0 acres. Impact: −10 acres/year, miles/year.	Available: 10 river-miles. Impact: 0 river/year.	Available: 20 FTE employees. Impact: +9.5 FTE employees.
Plan 3	Available: 1,500 acres. Impact: +775 acres/year.	Available: site on NRHP. Impact: none.	Available: 10 acres. Impact: 0 acres/year.	Available: 10 river-miles Impact: 0 river-miles/ year.	Available: 10 FTE employees. Impact: 0 FTE employees/ year.
Plan 4	Available: 200 acres. Impact: 0 acres/year.	Available: site on NRHP. Impact: none.	Available: 8 acres. Impact: −2 acres/year.	Available: 10 river-miles. Impact: 0 river-miles/ year.	Available: 40 FTE employees. Impact: +27.5 FTE employees/year.

NOTES: 1. Base condition year = 1990. 2. Period of analysis = 100 years.

TABLE 4—LIST OF PREPARERS

[The following people were primarily responsible for preparing this Environmental Impact Statement:]

Name	Discipline/expertise	Experience	Role in preparing EIS
Mr. William Brown	Biology/general, fisheries	2 years, lab assistant, American Biology Co.; 4 years, EIS studies, Gotham District.	Effects on Fishery Resources and Public Health.
Dr. Richard Green	Archeology	17 years, Professor of Prehistoric Archeology, Anytown University.	Consultant on Cultural Resource Impacts.
Mr. Thomas Jones	Engineering/civil, water resources.	5 years, civil engineer, Ubildum, Inc.; 3 years, planner, Gotham District.	Study Manager, Formulation of Alternatives, Needs Assessment
Mr. John Smith	Biology/wildlife	6 years, EIS studies, Gotham District	EIS Coordinator, Effects on Wildlife Resources.
Ms. Mary White	Chemistry/water	3 years, EIS studies, Gotham District	Effects on Water Quality.
Mr. Michael Yost	Economics/industrial, social.	2 years, industrial site analyist, Bencos Consultants; 6 years, economic studies, Gotham District.	Socio-Economic Effects.
Mr. Tom Black	Landscape architect/site planning and beautification.	4 years, site planner, Design Concepts Inc. of New York; 7 years EIS studies, Gotham District.	Effects on Natural Beauty and Landscape Aesthetics.

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TABLE 5—INDEX, REFERENCES AND APPENDIXES

[Name of selected, or tentatively selected, plan]

Subject	Study documentation		
	Environmental impact statement	Main report (References incorporated)	Report appendixes (References incorporated)
Affected Environment	Pp. EIS 21-25, para. 4.01	Pp. 22-29	App. A, pp. A-11—A-143.
Alternatives	Pp. EIS 13-20, para. 3.01	Pp. 35-97	App. B, pp. B-3—B-210.
Areas of Controversy	Pp. EIS 6-7, para. 1.05	P. 4, pp. 63-64	App. C, pp. C-3—C-17; App. X, pp. X-10—X-22.
Comparative Impacts of Alternatives.	Etc	Etc	Etc.
Cover Sheet			
Environmental Conditions			
Environmental Effects			
List of Preparers			
Major Conclusions and Findings			
Need for and Objectives of Action			
Planning Objectives			
Plans Consisted in Detail			
Plan Eliminated from Further Study			
Public Concerns			
Public Involvement			
Public Involvement Program			
Public Views and Responses			
Relationship to Environmental Requirements.			
Required Coordination			
Resource No. 1			
Resource No. 2			
Significant Resources			
Statement Recipients			
Study Authority			
Summary			
Table of Contents			
Unresolved Issues			
Without Conditions (No Action)			

NOTE: Replace, in alphabetical sequence, with the subject titles developed for significant resources (see paragraph 6g).

[45 FR 56761, Aug. 25, 1980; 46 FR 14746, Mar. 2, 1981]

APPENDIX B—ENVIRONMENTAL OPERATING PROCEDURES AND DOCUMENTS FOR REGULATORY FUNCTIONS

Subject and Paragraph

Introduction 1
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1. *Introduction.* Because of the diverse geographic areas and types of activities covered by this regulation, it is likely that interpretive problems may arise from time to time. In keeping with Executive Order 12044 and the policy stated in the CEQ regulation implementing NEPA (40 CFR 1500.2), where interpretive problems arise and consideration of all other factors do not give a clear indication of a reasonable interpretation, the interpretation (consistent with the spirit and intent of NEPA) which results in the least paperwork and delay will be used.

2. *General.* This appendix provides guidance on the environmental requirements of 40 CFR Parts 1500 through 1508 for Corps Civil Works field operating agencies with regulatory permits responsibilities. Where guidance in this appendix is not specific, the reader is referred to the basic regulation (ER 200-2-2). Where guidance is not specific in both this appendix and in the basic regulation, the reader is referred to 40 CFR Parts 1500 through 1508.

3. *Development of Information and Data.* The district engineer (division engineer in the case of New England and Pacific Ocean divisions) may require the applicant to furnish appropriate information that the district engineer considers necessary to allow preparation of an EA or EIS. This information shall include appropriate data necessary to properly evaluate reasonable alternatives to the applicant's proposal and to fully describe all such reasonable alternatives in the appropriate environmental document. The applicant should be advised that there is no assurance that favorable action will ultimately be taken on the application. In such situations where relevant information is missing or incomplete and the costs of obtaining it are exorbitant or the means to obtain it are not known, the district engineer should include a "worst-case" analysis (see 40 CFR 1502.22) in the appropriate environmental document if the district engineer believes the applicant's proposal may be approved. The district engineer may require the applicant to furnish any additional information necessary to properly assess the impacts of the applicant's proposed project and to evaluate alternatives under paragraph 11b(5) of this appendix. The district engineer shall assure the conduct of an independent evaluation and shall be responsible for the accuracy of the information submitted by the applicant.

4. *Elimination of Duplication with State and Local Procedures.* See paragraph 20 basic regulation.

5. *Informing the Public.* Several paragraphs of this appendix (paragraphs 7, 8, 10, 12, and 18) and 33 CFR Part 325 provide information regarding district engineers making available to the public certain environmental documents in accordance with 40 CFR 1506.6. The district engineer may, if resources are available, go beyond this regulation and inform the public of various other environmental and decision processes that have occurred.

6. *Pre-Application Consultation for Major Applications.* In accordance with 40 CFR 1501.2(d) and the guidance in 33 CFR Part 325, the district engineer shall establish local procedures and policies including an appropriate publicity program to advise potential permit applicants of the pre-application consultation process where future Corps permitting actions may be required. At the earliest possible time, the district engineer (or designated staff) shall inform potential applicants of the required public interest review including the preparation of an environmental document and attendent reviews, and other actions including the scoping process, if appropriate.

7. *Categorical Exclusions.* In addition, each district engineer may develop a supplemental list of proposed categorical exclusions as defined in 40 CFR 1508.4 appropriate to that district; notify other Federal, state, and local agencies and the general public through separate public notice procedures with a minimum 90 day comment period; and, if deemed necessary, hold a public hearing. The district engineer shall then forward the list through the division engineer to DAEN-CWO-N. Following review for Corps-wide consistency, the list will be forwarded to CEQ for approval. A public notice shall be issued at the conclusion of these procedures announcing the final list. This list may be revised from time to time using these public notice procedures. After adoption of categorical exclusion categories, public notices on site specific applications falling within such categories shall state that the application is considered to be a categorical exclusion so that commenting agencies and the public will have the opportunity to demonstrate that extraordinary circumstances exist on a particular application, thus requiring the preparation of an EA.

8. *EA/FONSI Document.* (See 40 CFR 1508.9 and 1508.13 for definitions).

a. *Environmental Assessment (EA).* The district engineer shall prepare an EA as soon as practicable after all relevant information has been made available to the district engineer (i.e., after the comment period for the public notice announcing receipt of the permit application has expired) and prior to preparation of the Findings of Fact (FOF). The EA shall include a discussion of reasonable alternatives. However, when the EA confirms that the impact of the applicant's proposal is not significant, there are no "unresolved conflicts concerning alternative uses of available resource . . ." (Section 102(2)(E) of NEPA), and the proposed action is a water dependent activity, the EA need not include a discussion on alternatives to the proposal. In all other cases the EA must address all the alternatives, that go before the ultimate decision maker. This discussion will include suggested means by which the environment might be protected and by which adverse impacts could be reduced by conditioning of the permit. The EA shall be a brief document (should not normally exceed 15 pages) primarily focusing on whether or not the entire project subject to the permit requirement could have significant effects on the environment but shall not be used to justify a decision. (For example, where a utility company is applying for a permit to construct an outfall pipe from a proposed power plant, the EA must assess the direct and indirect environmental effects and alternatives of the entire plant.) The EA shall conclude with a FONSI (See 40 CFR 1508.13) or a determination that an EIS is required.

b. *Responsibilities in Preparing EA.* If information for an EA is undertaken by an outside consultant or prepared by the applicant, the district engineer is responsible for independent verification and use of the data, evaluation of the environmental issues, and for the scope and content of the EA. Preparation of an EA shall be based on considerations discussed in 40 CFR Parts 1501, 1506 and 1508 and the instruction contained in paragraph 9 of the basic regulation.

c. *FONSI.* If, the district engineer determines that a permit proposal's impact is not significant, the district engineer shall include a FONSI (See 40 CFR 1508.13) at the end of the EA. The combined document (i.e., both tne EA and the FONSI) shall be dated, signed, and placed in the permit record. Where the district engineer has delegated authority to sign permits on his behalf, he may similarly delegate the signing of the EA/FONSI document. The FONSI will be based on information contained in the EA and other pertinent data obtained from cooperating Federal agencies having jurisdiction by law or special expertise, the interested public, the applicant, and Corp's expertise.

9. *Findings of Fact (FOF).* In accordance with 33 CFR Part 325, the District Engineer shall prepare as a separate document a FOF for every permit application not requiring an EIS. The FOF may reference the EA to avoid duplication.

10. *Environmental Impact Statement—General.*

a. *Determination of Lead and Cooperating Agencies.* When the district engineer concludes that the applicant's proposed activity may significantly affect the quality of the human environment and the district engineer believes that a permit may be warranted, the district engineer will first determine whether any other Federal agencies are involved. The district will contact any such other Federal agencies to determine their respective role(s) in the overall Federal action, i.e., that of lead agency, joint lead agency, or cooperating agency.

b. *Corps as Lead Agency.* When the Corps is lead agency, it will be responsible for funding the entire EIS except for those portions which come under the jurisdiction of other Federal agencies. Staff support from other Federal agencies beyond the immediate jurisdiction of those agencies may be cost reimbursed by the Corps under written agreement.

c. *Corps as Cooperating Agency.* If another agency is the lead agency as set forth by the CEQ regulations (40 CFR 1501.5 and 1501.6(a) and 1508.16), the district engineer will coordinate with that agency as a cooperating agency under 40 CFR 1501.6(b) and 1508.5 to insure that agency's resulting EIS may be adopted by the Corps for purposes of exercising its permit authority. As a cooperating agency the Corps will be responsible to the lead agency for providing that environmental information which is directly related to the regulatory matter involved and which is required for the preparation of an EIS and any inherent funding involved. This in no way shall be construed as lessening the district engineer's ability to request the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix.

When the corps is a cooperating agency because of a regulatory permit action, the district engineer will, in accordance with 40 CFR 1501.6(b)(4), "make available staff support at the lead agency's request" to enhance the latter's interdisciplinary capability provided the request pertains to the Corps permit action covered by the EIS. Beyond this, Corps staff support will generally be made available to the lead agency to the extent practicable within its own responsibility and available resources. Any assistance to a lead agency beyond this will

normally be by written agreement with the lead agency providing for a cost reimbursible basis for Corps resources expended. If the district engineer thinks a public hearing should be held and another agency is the lead agency, the district engineer may request that the lead agency hold a joint public hearing and provide reasons why the joint hearing will be helpful. The district engineer should offer to take an active part in the hearing and ensure coverage of Corps concerns.

d. *Additional Information from Applicant Relating to EIS Preparation.* In cases where a Corps EIS is required, the district engineer may require the applicant to furnish appropriate additional information that the district engineer considers necessary to allow preparation of the EIS. The district engineer shall assist the applicant by outlining the types of information required. Early draft submittals of data may be made by the applicant to the district engineer for advisory review by appropriate disciplines either within the district engineer's staff or other agencies. This procedure envisions Corps or agency mark-up and informal comment and return to the applicant with brief time schedules to avoid unnecessary delays in the preparation process. The single point of contact designated within the district staff to effectively coordinate the regulatory process (33 CFR Part 325) shall also coordinate this process.

e. *Scoping Process.* The district engineer shall include the applicant in the scoping process with a view that the scope of the material to be submitted by the applicant will be sufficient. The scoping process should develop the topical scope of the pending EIS and allow the applicant to be advised of the data and information required by the district engineer. The scoping process shall be conducted by the element within the district that is responsible for preparing the EIS, but shall in any case, involve and include the single district regulatory staff coordinator for the proposed regulatory (and NEPA) action.

f. *Contracting.* The district engineer may prepare an EIS either with its own in-house staff or by choosing a contractor. In choosing a contractor who reports directly to the district engineer, the procedures of 40 CFR 1506.5(c) will be followed. Where the district engineer is aware of any conflict of interest concerning the outcome of the proposed permit action which the proposed contractor may have, the district engineer shall not select that contractor. Where the information base required for an EIS is prepared by a consultant employed by the applicant with a view that the resulting information will meet the district engineer's request for additional information which may be used by the district engineer in preparing an EIS, the district engineer will i) advise the applicant and/or his consultant of the Corps' information requirements, and ii) meet with the application and/or his consultant from time to time and provide him with the district engineer's views regarding adequacy of the data that is being developed (including how such data will be viewed in light of any possible conflict of interest which the consultant may have). The applicant and/or his consultant may either accept or reject the district engineer's guidance. However, the district engineer may require the applicant to resubmit any previously submitted data which the district engineer considers inadequate or inaccurate. The district engineer must specify the portion of information which is in contention. In all cases, the district engineer shall ensure the conduct of an independent evaluation of the information submitted and shall be responsible for its accuracy. This shall be documented in the record. Both the names of the principal preparers and those responsible for the independent evaluation shall be included in the EIS (see CFR 1506.5(a)).

g. *Change in EIS Determination.* If the district engineer has previously published a notice of intent to prepare an EIS, or has already prepared and distributed a Draft EIS, the district engineer may at any time determine an EIS is no longer required due to (1) reevaluation of the original determination, (2) reduced scope of the proposal, (3) receipt of additional information, or (4) sufficient evidence in the record to support denial of the proposal. If the EIS process is curtailed, the distict engineer shall notify in writing the Office, Chief of Engineers, the appropriate Corps division office, the appropriate EPA Regional Administrator, the Office of Environmental Review of the Environmental Protection Agency, Washington, DC, and the public of his determination.

h. *Permit Denial Anticipated.* The EIS process may follow through the completion of the final EIS stage even though denial of the application is anticipated if the record is not sufficient to support denial without completion of the final EIS process or if, in the district engineer's opinion, the public interest would be better served if the EIS process were completed. However, if denial is anticipated, the district engineer may informally notify the applicant that, although a final decision has not been made, the district engineer anticipates denial of the permit with the view that this applicant may wish to modify his proposal. If the case will be elevated to higher authority for decision, any EIS process must be completed prior to any such elevation. In this instance the district engineer should not limit the alternatives from which higher authority must choose. The district engineer shall forward to higher authority his views on com-

ments received on the final EIS or final supplement to the final EIS.

i. *Time Limits.* If, in addition to time requirements the district engineer might otherwise set, the Corps is asked by an applicant to set time limits for the various stages in the NEPA process under 40 CFR 1501.8, the district engineer shall set time limits in accordance with the guidelines presented in 40 CFR 1501.8. These time limits shall be set in the best judgment of the district engineer based on past experience. Because problems beyond the control of the district engineer occasionally arise, any time limits set cannot be considered absolutely binding. When the Corps is a cooperating agency in a permit related action, the district engineer will make every reasonable effort to adhere to the time limits imposed by the lead agency.

j. *Definition of Corps Action.* For regulatory permits, the Corps action is issuance of a permit or issuance of a permit with conditions. For regulatory permits, denial of a permit application is considered "no action" on the part of the Corps.

11. *Organization and Content of Draft EIS's.*

a. *General.* This section gives detailed information for preparing Draft EIS for regulatory permit applications that significantly affect the quality of the human environment. When the Corps is the only lead agency, this Draft EIS format and these procedures will be followed. When the Corps is one of the joint lead agencies, the joint lead agencies will mutually decide which agency's format and procedures will be followed. When the Corps is a cooperating agency, the district engineer will ensure that the Corps' information requirements are contained in the lead agency's Draft EIS. In either case, the EIS should assess the direct and indirect environmental effects and alternatives on the entire project including the portion directly subject to the permit requirement.

b. *Format.*

(1) *Cover Sheet.*

(a) Ref. 40 CFR 1502.11.

(b) The "person at the agency who can supply further information" (40 CFR 1502.11(c)) is the regulatory action officer handling that permit action.

(c) The cover sheet shall identify the EIS as a Corps permit action and state the authorities (Sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction.

(2) *Summary.* In addition to the requirements of 40 CFR 1502.12, this section shall identify the proposed action as a Corps permit action stating the authorities (Sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction; it shall also summarize the purpose and need for the proposed action as described in paragraph 11(b)(4) below, and it shall briefly state the beneficial/adverse impacts of the proposed action.

(3) *Table of Contents.*

(4) *Purpose of and Need for the Proposal.* This section shall briefly recognize that every application has both an applicant's purpose and need and a public purpose and need. These may be the same when the applicant is a governmental body or agency. In most instances when an EIS is required and the applicant is not a governmental body or agency, the applicant is a member of the private sector engaged in providing a good or service for profit. At the same time, the applicant is requesting a permit to perform work which, if approved, is considered in the public interest (i.e., provides a public benefit). This public benefit shall be stated in as broad, generic terms as possible. For instance, the need for a water intake structure requiring a Corps permit as part of a fossil fuel power plant shall be stated as the need for energy and not be limited to the need for cooling water. In a similar way, the need for housing near canals or near marinas, etc., shall be expressed as the need for shelter and not as the need for recreation near water.

(5) *Alternatives.*

(a) Ref. 40 CFR 1502.14

(b) *Alternatives to be considered.* The EIS shall document a reasonable number and range of alternatives which would satisfy the purpose and need (as described in paragraph 11(b)(4) above) for which the applicant has submitted his proposal. The EIS (or EIS supplement) must address all the practicable alternatives that go before the ultimate decision maker (see 40 CFR 1505.1(e)). If the decision maker's proposed action on a permit application was not included as one of the alternatives in the final EIS and it differs substantively from those alternatives which were discussed, a draft and final supplemental to the final EIS as discussed in paragraph 16 of this appendix, must be prepared and circulated. However, new alternatives not previously discussed in a draft EIS may be included in the final EIS if they are variants of alternatives described in the draft EIS. The alternative section shall discuss the environmental impacts of the applicant's proposal and alternatives in comparative form. A chart is highly recommended as a means of providing easy, side by side, analysis of the impacts of the proposal and its alternatives. Only those features and impacts that are significant and comparable shall be compared side by side. In depth evaluation will normally be limited to those reasonable alternatives which are both practical and:

(i) Within the capability of the applicant and within the jurisdiction of the Corps of Engineers. (These alternatives may encompass the Corps alternative to issue the

permit as requested or to issue with mitigating conditions. It may also encompass the alternative to deny the permit with a view toward accomplishing the objective of the proposal by the applicant (or by any other party) by some other means or at some other site still within Corps jurisdiction.)

(ii) Within the capability of the applicant but outside the jurisdiction of the Corps of Engineers. (This alternative may include denial of the permit with a view toward accomplishing the objective of the proposal by the applicant (or any other party) outside of Corps jurisdiction.)

(iii) Reasonably foreseeable, beyond the capability of the applicant but *within* the jurisdiction of the Corps of Engineers. (This alternative may include the do-nothing or deny alternative, with a view toward the satisfaction of the public and/or private need by some other entity beyond the control of the applicant but within the jurisdiction of the Corps of Engineers).

(iv) Reasonably foreseeable, although beyond both the capability of the applicant *and* outside the jurisdiction of the Corps of Engineers. (This alternative may include the do-nothing or deny alternative, with a view toward the satisfaction of the public and/or private need by some other entity beyond the control of the applicant and beyond the scope of the Corps of Engineers.)

The EIS should clearly identify alternatives discussed in detail by the above categories. While these alternatives are to be discussed in depth, the level of in-depth evaluation of each may vary dependent upon the ranking of the alternatives in order of the likelihood that they may be accomplished. For non-water dependent activities which may affect floodplain values, the district engineer shall include in his EA or EIS a discussion of the availability of practicable alternatives outside the floodplain pursuant to Executive Order 11988.

(c) 40 CFR 1502.23 states a cost-benefit analysis shall be incorporated into the EIS when such an analysis is "relevant to the choice among alternatives . . . being considered for the proposed action." For regulatory permits, cost-benefit ratios need not be prepared on proposed actions as they relate to the efficiency of the proposal or the efficiency of the enterprise in the private sector. However, baseline economic data and its interpretation is appropriately included in an EIS when the data shows a measurable impact on the public (e.g. the price variation of energy when produced by a coal-fired generating plant versus nuclear plant or hydropower).

(d) *Disclosure of Preferred Alternative.* For regulatory permit actions, the Corps takes an impartial position whether to issue or deny a particular application until the public interest review is complete. At no time is the Corps a proponent of any action. It simply determines whether or not certain actions proposed by applicants are in the public interest and under what circumstances such proposals, if modified, would be in the public interest. The Corps' actual decision that is made by the final decision maker will be stated in the Record of Decision. This does not negate the requirement under 40 CFR 1505.2(b) for the district engineer to objectively state the "environmentally preferred alternative."

(e) *Mitigation.* Guidance on mitigative measures which may be considered when evaluating permit applications is given in 33 CFR 325.4.

(6) *Affected Environment.* Ref. 40 CFR 1502.15

(7) *Environmental Consequences.*

(a) Ref. 40 CFR 1502.16

(b) Ref. to 33 CFR Part 325 for definitions of primary effects, secondary effects, and other impacts.

(c) Except for Federal projects meeting the requirements of Section 404(r) of the Clean Water Act, the Section 404(b)(1) analysis under the Clean Water Act may, but need not necessarily, be included in the EIS at the discretion of the district engineer. The information required by the 404(b)(1) guidelines, when included, will be integrated into the text of the EIS.

(8) *List of Preparers.* Ref. 40 CFR 1502.17

(9) *Public Involvement.*

(a) References: 40 CFR 1502.9(b), 1502.10(i), 1503.1, 1503.4, 1506.6, and 1506.9.

(b) This section shall briefly describe the public's involvement in the EIS process. It shall (i) briefly state the means used to involve the public including the scoping process, any public hearings held, etc., (ii) briefly state the Federal, State, and local agencies, organizations, and individuals (in this order) to whom copies of the statement have been sent, (iii) if a final EIS include copies of the public's comments on the draft EIS and the Corps responses to those comments. This portion shall include any responsible opposing views as well as the Corps responses to those issues raised. See paragraph 19c, "Comments Received on The Draft EIS" of basic regulation.

(10) *Appendixes.* The appendix portion of the EIS should contain background and supporting data and studies while the text of the EIS should contain data stating baseline information and anticipated impacts of the proposal. One guideline to be used in this regard is to place the data in the EIS text itself when to do otherwise would cause the reader to refer frequently to the appendix in order to understand the EIS text. Any remaining information not able to be incorporated by reference in accordance with 40 CFR 1502.21 should be placed in the appendix. Placing as much data, studies,

etc., into the draft EIS appendixes, within the above guidance, has the additional advantage that such information need only be referenced in the final EIS, not additionally reproduced in the final EIS.

(11) *Index.* The index of an EIS is to be designed to provide for easy reference to items discussed in the main text of the EIS. These items are to be listed in the index in alphabetical order and page(s) and paragraph number(s) given for each item. The index shall be placed at the very end of the EIS document.

12. *Notice of Intent.* The district engineer shall follow the guidance in ER 200-2-1 in preparing a notice of intent to prepare a Draft EIS for publication in the FEDERAL REGISTER. A notice of intent announcing a proposed Draft EIS for regulatory permit actions shall identify the action as a regulatory permit action in the title of the notice as listed in the Table of Contents to the FEDERAL REGISTER.

13. *Public Hearing.* If a public hearing is to be held pursuant to 33 CFR Part 327, and a draft EIS is to be considered at the public hearing, the district engineer will make the draft EIS available to the public at least 15 days in advance of the hearing (unless the purpose of the hearing is to provide information for the draft EIS). If a hearing request is received from another agency having jurisdiction as provided in 40 CFR 1506.6(c)(2), the district engineer shall initiate coordination for a joint hearing with that agency whenever appropriate. Unless the district engineer concurs that such a hearing is required under 33 CFR Part 327 he will not independently conduct a hearing.

14. *Organization and Content of Final EIS.* The organization and content of the final EIS shall follow the guidance in paragraph 11a(2) of the basic regulation. The EIS is not a decision document and the filing of a final EIS is not to be considered a decision on a permit application. Nor is an EIS to be prepared to justify a decision. An EIS is prepared to provide information on which a decision is based. Filing the final EIS is merely one of the administrative steps which must be taken to comply with the procedural provisions of NEPA in accordance with CEQ regulations when processing a permit application which may significantly affect the quality of the human environment. Permit issuance cannot occur until 30 days after the final EIS has been noticed in the FEDERAL REGISTER by EPA and the Record of Decision signed.

15. *Comments Received on the Final EIS.* For permit cases to be decided at the district level, the district engineer will carefully review and consider all comments received on the final EIS before making a final decision on the applicant's proposal but need not reply to those parties providing comments on the final EIS. For permit cases elevated to higher authority for a decision, the district engineer shall forward the incoming letters together with appropriate responses to the substantive comments to higher authority along with the case. In the case of a letter recommending a referral under 40 CFR 1504, the district engineer will follow the guidance in paragraph 23 of this appendix.

16. *EIS Supplement.* a. See 40 CFR 1502.9(c)(1) and paragraph 11b of basic regulation when a supplement to either a draft or final EIS is required.

b. A supplement to a draft EIS will require a 45-day minimum comment period. Note that there is no draft supplement or final supplement to a draft EIS, only a supplement to a draft EIS. The final EIS will encompass all information presented in both the draft EIS and the supplement to the draft EIS.

c. A supplement to a final EIS will be prepared as both a draft supplement to the final EIS and a final supplement to the final EIS. The 45- and 30-day minimum comment periods, respectively, are required. No final action shall be taken on the applicant's proposal sooner than 90-days after the draft supplement has been filed with EPA. See 40 CFR 1502.9(c)(4).

d. Supplements will be prepared in the EIS format described in paragraph 11 of this appendix. References to the draft or final EIS being supplemented should be used extensively to eliminate repetitive discussion. The supplements should primarily be concerned with and should discuss the significance of impacts resulting from the changes, new information, or circumstances relevant to the environmental or other concerns which impact or have a bearing on the applicant's proposal.

17. *Supplemental Information and Other Reports.* Paragraphs 11(d) and (e) of the main text provide background information and guidance for supplemental information reports. Supplemental information reports are not required by 40 CFR Part 1500. Therefore, regulatory permit field elements need not prepare them. However, should a district engineer feel the public interest would be better served by distributing such supplemental information reports to the public, he may do so at his discretion. Unless specifically requested none are to be forwarded to DAEN-CWO-N.

18. *Public Notice Announcing Availability of Draft, Final EIS and EIS Supplements.* In order to notify the interested public of its opportunity to comment on draft and final EIS and any EIS supplements, the district engineer shall issue a public notice as soon as practicable after the filing notation has been published in the FEDERAL REGISTER. This notice should be furnished to all par-

ties receiving any earlier notices, all parties receiving any previous copies of the EIS, and all others who have expressed an interest in the application as well as those parties listed in 40 CFR 1506.6 as appropriate. When the Corps is a cooperating agency, the district engineer may, but is not required, to distribute public notices in accordance with this paragraph. The public notice should include:

a. A brief summary of the application (applicant work, date(s) of other notice(s), dates of any previous EIS (draft, supplement to the draft, final, draft supplement to the final), date(s) of hearing(s) if held;

b. Opportunity to comment to the district engineer on the EIS or EIS supplement until the deadline date projected by the comment period (required by 40 CFR 1506.10 and paragraph 16 of Appendix B) which began with notation in the FEDERAL REGISTER that the EIS or EIS supplement had been filed;

c. A statement that the comments received on the EIS or EIS supplement will be evaluated and considered in arriving at a final decision on the application; and

d. Information on how interested parties can obtain or have access to the EIS or EIS supplement.

19. *Filing Requirements.* District engineers will file draft and final EIS and any EIS supplements directly with EPA after appropriate review by the respective division office and the incorporation in the EIS of division's comments. Five (5) copies shall be sent to Director, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Draft and final EIS and any appropriate supplements shall be mailed (with the required number of copies) to those agencies, groups, and individuals known to have an interest or who have requested they receive such copies for the proposal in question and in accordance with 40 CFR 1502.19, 1503.1, and 1506.6. At the same time they are mailed to EPA for filing, one copy of each draft and final EIS, and EIS supplements when appropriate, shall be forwarded to HQDA (DAEN-CWO-N) WASH DC 20314. The transmittal letter to OCE shall include the status of the permit application, a list of the objectors, the issues involved, whether the case is in litigation, and a preliminary determination whether the permit decision will be made at the district level. 40 CFR 1506.10 describes the timing of an agency action when an EIS is involved.

20. *Expedited Filing.* 40 CFR 1506.10 provides information on allowable time reductions and time extensions associated with the EIS process. When an applicant's proposed action must be undertaken within critical time restraints or because of compelling reasons of national policy, a shortened review period may be recommended. In such cases, the district engineer will provide the necessary information and facts to HQDA (DAEN-CWZ-P) WASH DC 20314 (with copy to DAEN-CWO-N) for consultation with EPA for a reduction in the prescribed review periods.

21. *Record of Decision.* In those cases involving an EIS, the Findings of Fact will be called the Record of Decision and shall incorporate the requirements of 40 CFR 1505.2. The Record of Decision is not to be included when filing a final EIS. The Record of Decision is not to be prepared nor signed until 30 days after the final EIS has been noticed in the FEDERAL REGISTER by EPA. To avoid duplication, the Record of Decision may reference the EIS.

22. *Predecision Referrals by Other Agencies for Regulatory Permits.* If the district engineer receives comments on a draft EIS from another Federal agency advising of a potential referral to CEQ under 40 CFR Part 1504, the district engineer shall, to the extent practicable, provide the necessary information and/or attempt to resolve the differences prior to filing the final EIS on the proposed action. In all cases the final decision-maker, as set forth in 33 CFR 325.8, will wait the 30 day comment period following filing of the final EIS before making his final decision.. If this decision is contrary to the position of the agency which has indicated an intent to refer the matter to CEQ, the decision-maker will notify the agency and CEQ of his proposed decision. The referring agency will then have 25 calendar days to actually refer the case to CEQ under 40 CFR Part 1504 if it so chooses. If a referral is made, the decision-maker will transmit the referral to (DAEN-CWZ-P) and (DAEN-CWO-N) for further guidance.

23. *Review of Other Agencies' EIS.* If the district engineer determines after review of another agency's draft EIS that the proposed action (which must involve a Corps permit action) is inadequate with respect to the Corps permit action, the district engineer shall attempt to resolve the differences concerning the Corps permit action prior to the filing of the final EIS by the other agency. If these attempts are unsuccessful and, upon review of another agency's final EIS the district engineer finds that final EIS is inadequate with respect to the Corps permit action, the district engineer shall supplement the final EIS with either an EA or a draft and final supplement to that agency's final EIS.

24. *Monitoring.* Monitoring compliance with permit requirements shall be carried out in accordance with 40 CFR 1505.3 and as deemed necessary under 33 CFR Part 325. For those permit actions for which an EIS has been prepared and the Corps is the lead agency, the district engineer shall, upon written request, make available to the

public the results of relevant monitoring. Appropriate mitigation and other conditions shall be a part of the permit as specified in 33 CFR Part 325. For those permit actions for which an EIS has been prepared and the Corps is the lead agency, the district engineer shall, upon written request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which the Corps adopted in making its permit decision.

[45 FR 56761, Aug. 25, 1980; 46 FR 14746, Mar. 2, 1981]

APPENDIX C—PROCESSING CORPS EIS

EIS prepared for Corps Civil Works actions will be processed in accordance with the instructions contained in this appendix and applicable paragraphs in the regulation.

Title

1. Survey Studies
2. Continuing Authority Studies
3. Post Authorization Advanced Engineering and Design (AE&D)
4. Projects in a Continuing Construction Category
5. Completed Projects in an Operations and Maintenance Category
6. Regulatory Permits
7. Real Estate Managment and Disposal Actions
8. EIS Processing Instructions for ASA (CW) Review

1. *Survey Studies.* Environmental considerations shall be integrated into the multiobjective planning process in accordance with the ER 1105-2-200 series. Documentation and related processing requirements based on 40 CFR Parts 1500 through 1508 are discussed below for the three planning stages.

a. *Stage 1 Planning.* No separate, formal NEPA-related documents are required during Stage 1 Planning. Environmental considerations will be included in the Reconnaissance Report (See ER 18-2-2, ER 1105-2-210 and ER 1105-2-920).

b. *Stage 2 Planning.* Environmental considerations will be included in Stage 2 documentation submitted to Division for the Stage 2 Checkpoint Conference (See ER 18-2-2, ER 1105-2-210 and ER 1105-2-920).

c. *Stage 3 Planning.* A Draft Survey Report, consisting of a draft of the Main Report (which includes a Draft EIS) and Appendixes, will be submitted to Division to accomplish Milestone 06 (See ER 18-2-2, ER 1105-2-210 and ER 1105-2-920). Circulation of the Draft Survey Report and filing of the Draft Survey Report and EIS with EPA (Milestone 09) will be accomplished at least 15 days before the Stage 3 Public Meeting is conducted.

(1) The number of copies of the Draft Survey Report to be distributed to accomplished Milestone 09 is as follows:

(a) Three (3) copies to HQDA (DAEN-CWP-E, C or W, as appropriate) WASH DC 20314.

(b) Three (3) copies to the appropriate division engineer (not applicable to NED and POD).

(c) Five (5) copies to EPA (Washington Office) for filing (See paragraph 17).

(d) One or more copies to public agencies, private groups and individuals known to have an interest in the study. A notice of availability will be sent to all others on the mailing list.

(2) District engineers shall insure that the Draft Survey Report and EIS will be filed with EPA no earlier than they are also circulated to parties on the study mailing list.

(3) The complete Draft Survey Report and EIS, including all report appendixes, will be provided in the distribution required by paragraphs 1c (1) (a)-(c) above. Other groups and parties on the study mailing list known to have an interest in the study will receive, as a minimum, the draft of the Main Report (which includes a Draft EIS) and the report appendix titled Public Views and Responses (See ER 1105-2-920, Appendix B, paragraph 3). In cases where the other report appendixes are exceedingly voluminous, consideration should be given to including in the distribution only those appendixes that will be of particular interest to each recipient. For example, it may not be necessary to provide a state fish and game agency with a copy of the Social and Cultural Resources Appendix. If this approach is used, an annotated Bibliography of Report Appendixes (citing the title, preparation date and cost and a summary of the contents for each Appendix, as well as instructions for obtaining copies of Appendixes) should be attached to the Report. In any case, Appendixes will be provided upon request.

(4) A news release announcing the availability of the draft may also be issued by the reporting officer releasing the document.

d. *Division Review.* After the Stage 3 public meeting and public review of the Draft Survey Report and EIS, the district engineer will finalize the Survey Report, including preparation of the final EIS. In accordance with paragraph 19c and Appendix A all comments and appropriate responses will be included in the Public Views and Responses Appendix. Significant issues and/or substantive comments received will be discussed in the Public Involvement chapter in the main text of the final EIS. The Final Survey Report, which will include the final

EIS as a part of the Main Report will be submitted to the division engineer for review, approval and transmittal to the Board of Engineers for Rivers and Harbors (BERH) or Mississippi River Commission (MRC) in the case of Survey Reports prepared for Mississippi River and Tributaries projects. For the purpose of this regulation, only the acronym BERH will be used since the review functions of MRC and BERH are identical. (Milestone 10). Although the EIS in the main report is identified as a "final" at this stage of processing, it should be clear to all those requesting a copy that it is an "Interim Document Under Agency Review—Subject to Revision" and will become the agency's final EIS when it is filed with EPA after BERH and OCE review.

e. *BERH Review.* BERH will review the EIS at the same time as it reviews the Final Survey Report. The report and EIS should be compatible. If BERH review requires minor revisions to the plan as recommended by the reporting officers, minor changes to the EIS reflecting plan revisions shall be noted in the BERH report. If BERH action results in major revisions to the plan recommended by the reporting officer and the revisions are variants of the plan or alternatives described in the draft EIS, an addendum to the final EIS will be prepared by BERH (with assistance from the reporting officer, as required). However, if the major revisions are not variants of the plan or alternatives described in the EIS, a supplement to the draft EIS will be required. This addendum "package" will be identified as an "Addendum to the Final EIS—Environmental Consequences of the Modifications Recommended by the Board of Engineers for Rivers and Harbors—project name." The format shall include an abstract on the cover page, recommended changes to the reporting officer's proposed plan, rationale for the recommended changes, environmental consequences of the recommended changes and the name, expertise/discipline, experience, and role of the principal preparer(s) of the addendum. Letters received during BERH review which provide new pertinent information having a bearing on the modifications recommended by BERH will be attached to the addendum.

f. *Departmental Reviews.* The Main Report including the final EIS, together with the proposed report of the Chief of Engineers and the BERH report, will be filed with EPA at the same time as it is circulated for 90-day Departmental review to the concerned state(s) and Federal agencies at the Washington level (Milestone 13). District engineers will circulate the Proposed Chief's report, BERH report, and the Main Report and final EIS to parties on the project mailing list not contacted by OCE (groups and individuals known to have an interest in the study or who provided comments on the draft EIS) allowing the normal 30-day period of review. OCE will provide a standard letter for the district to use to transmit these documents which explains the current status of the report and EIS and directs all comments to be sent to OCE ATTN: (DAEN—CWP). Copies of report appendixes circulated with the draft need not be circulated with the Main Report and final EIS except for the Public Views and Responses Appendix which shall accompany all final EIS. All letters of comment received on the Main Report and final EIS together with OCE responses and the draft Record of Decision will be included with other papers furnished at the time the final Chief's Report is transmitted to ASA (CW) for further review and processing. (Milestone 15).

g. *Executive Reviews.* After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to ASA (CW). ASA (CW) will transmit the entire report to the WRC for technical review. After technical review the WRC will prepare its findings and return the report to ASA (CW) who will transmit the report to OMB requesting its views in relation to the program of the President (Milestone 16). The WRC and OMB packages will not contain copies of the draft Record of Decision. After OMB provides its views, ASA (CW) will sign the Record of Decision and transmit the report to Congress (Milestones 17-19). A letter of issuance inclosing a copy of the Record of Decision will be sent to the Washington Office of EPA with a copy of the letter to the concerned Regional Administrator. The district engineer shall provide copies of the Record of Decision to agencies, organizations and members of the public known to have an interest in the proposed action.

2. *Continuing Authority Studies*—a. *General.* The Detailed Project Report (DPR) as discussed in paragraph 6b(3), is the decision document for Continuing Authority Studies and will be prepared in draft and final format including a draft and final EIS and FONSI (as appropriate) within the bound document. The DPR should follow the format of a survey report as discussed in ER 1105-2-920.

The organization, format and content of the EIS will be in accordance with the guidance in Appendix A. If an EA and FONSI are used, they will be prepared in accordance with paragraphs 9 and 10 and included within the DPR in place of the EIS. Since the proposed action normally requires an EIS, the EA and unsigned FONSI will be circulated with the DPR.

b. *Preparation and Draft Review.* As soon as practicable after initiation of the study, a Notice of Intent, as discussed in paragraph 16, will be prepared and published in the FEDERAL REGISTER if the district engineer de-

termines that an EIS will be prepared for the proposed action. Following the essential planning stage documentation, the district engineer will prepare the draft DPR including the draft EIS within the DPR, and circulate it to agencies, groups and individuals known to have an interest in the study. A notice of availability will be sent to all others on the mailing list. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 17. In the case of an EA, only one copy of the report and the EA shall be furnished to the Washington office of EPA. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-CWP-E, C, or W as appropriate) WASH DC 20314, and three to the division engineer). District engineers shall insure that the Draft Report and EIS will be filed with EPA no earlier than they are also circulated to parties on the mailing list. If a late stage public meeting is held in connection with the proposed action, the Draft Report and EIS should be available to the public at least 15 days before the meeting. A news release announcing the availability of the document may also be issued when the draft is filed with EPA.

c. *Agency Review.* After review and evaluation of comments received the district engineer will finalize the DPR, including preparation of the final EIS within the DPR. Comments and responses will be handled in accordance with paragraph 19c, and Appendix A. In the case of an EA, the comments and responses will be handled the same as for an EIS. The district engineer will sign the FONSI and include it with the EA in the final DPR. Eleven (11) copies of the Final DPR will be transmitted to the division engineer for review and approval of the technical aspects of the proposed action. After review the division engineer will transmit eight (8) copies of the Final DPR to HQDA (DAEN-CWP-E, C or W as appropriate) WASH DC 20314 for further processing. Appropriate elements within OCE will review the Final DPR and EIS and file it with EPA in accordance with paragraph 17 with a copy provided to ASA(CW). District engineers will be advised when OCE review is completed so that the Final DPR and EIS will be filed with EPA no earlier than they are also circulated to parties on the mailing list.

d. *Final Review.* Letters of comment on the Final DPR including the final EIS, will be answered by the district engineer on an individual basis. Five (5) copies of all incoming letters and the district engineer's reply, as appropriate together with a draft of the Record of Decision, will be submitted through division to the appropriate element within OCE who filed the Final DPR. After review of all incoming comments and Corps responses, the Director of Civil Works will sign the Record of Decision and approve the project. A letter of issuance together with a copy of the Record of Decision will be sent to the Washington Office of EPA with a copy to the concerned Regional Administrator. The district engineer shall provide copies of the Record of Decision to agencies, organizations and members of the public known to have an interest in the project.

3. *Post Authorization Advanced Engineering and Design (AE&D)*— a. *Phase I GDM.* The Phase I GDM (AE&D Planning Report) as discussed in paragraph 6b(2), is the decision document at this first phase of post-authorization planning for those projects authorized for construction, those authorized for post authorization planning only and those cases where a combined post authorization planning and design report is considered advisable. It will follow the format prescribed for survey reports as discussed in ER 1105-2-920 and procedures outlined in ER 1105-2-30 for OCE or division approval or congressional action. After receipt of Phase I planning study funds, the district engineer will review the final EIS that was filed with the project was authorized and make a determination what type of further NEPA documentation may be required. If the Phase I study indicates that the environmental effects of the plan as proposed have not changed significantly from that which was authorized, and were adequately and fully covered in the final EIS, no further documentation is required except to note the availability of the previously filed final EIS. An EA may be used to demonstrate compliance with environmental review and consultation requirements not completed at time of authorization, as discussed in paragraph 25, except if the final EIS is to be submitted to Congress under Section 404(r) in which case a Supplemental Information Report addressing the Section 404 evaluation shall be utilized, together with the previously filed final EIS, as the documents submitted to Congress under Section 404(r). If the Phase I review indicates that there are significant impacts resulting from changes in the project which would significantly affect the quality of the human environment, a draft and final EIS supplement, prepared in accordance with paragraph 11.b. will be included within the draft and final Phase I GDM. Projects administratively combined for AE&D planning and design (Phase I and II) will undergo similar review, and EA or EIS documentation as necessary will be prepared. In the case of a combined GDM where it has been determined that an EIS or EIS Supplement is required, the final EIS or final supplement must be filed and the 30-day review completed prior to OCE approval of the proposed action and signing of the Record of Decision.

(1) *Legislative Phase I GDM.* EIS documentation for Phase I GDM prepared for projects authorized for Phase I planning only which require BERH and Departmental review will be processed similar to survey studies as discussed in paragraph 1c, d, e, f and g of this Appendix. This documentation may vary from a statement indicating that no further NEPA documentation is required (no significant change) to a draft and final EIS supplement (where the environmental effects of the plan, as reformulated, are significant).

(2) *Administrative Phase I GDM.* EIS documentation for Phase I GDM prepared for projects authorized for construction including Section 201 projects which can be approved by the division engineer, or under certain conditions by OCE, may vary from a statement of no change to a draft and final EIS supplement as noted above.

b. *Phase II GDM.* The Phase II GDM (AE&D Design Report) presents the results of the detailed design and cost estimate studies. It may be used the same as the Phase I GDM as a basis for Congressional modification of an existing authorization. For projects authorized for Phase I planning only, the Phase I GDM must be submitted to Congress before design studies are initiated. For projects authorized for construction, the timing of initiation of design studies is discussed in ER 1110-2-1150. In either case the Phase I GDM together with the proper NEPA documentation will be reviewed during design studies to determine if the environmental effects of the recommended project were adequately discussed. If the design review indicates no significant changes, no further EIS documentation is required except to reference the previously filed documents in the Phase II GDM. If the environmental effects have changed significantly, a draft and final EIS supplement will be required.

c. *Preparation and Draft Review.* The organization and content for an EIS supplement included with the Phase I GDM will follow the guidance in Appendix A. The EIS supplement for the Phase II GDM will follow the format outlined in 40 CFR 1502 and will be prepared and circulated as a separate, self supporting document except if extensive reformulation studies are required in which case it may be combined and circulated with the Phase II GDM. A Notice of Intent, as discussed in paragraph 16 will be prepared and published in the FEDERAL REGISTER if the district engineer determines that a draft EIS supplement will be prepared. The Draft Phase I GDM or Phase II GDM if applicable including the draft EIS supplement or separate draft EIS supplement will be circulated to agencies and groups and individuals known to have an interest in the project. A notice of availability will be sent to all others on the project mailing list. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 17. In the case of an EA, only one copy of the report and the EA and unsigned FONSI shall be furnished to the Washington office of EPA. For Legislative Phase I GDM, six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-CWP-E, C, or W as appropriate) WASH DC 20314, and three to the division engineer). For Administrative Phase I GDM, three (3) copies will be transmitted to the division engineer. For Phase II GDM, either three or six copies will be transmitted to higher authority depending on the level of approval of the proposed action. District engineers shall insure that the Draft Phase I or Phase II GDM and EIS supplement or separate draft EIS supplement will be filed with EPA no earlier than they are also circulated to parties on the project mailing list. If a public meeting is held in connection with the proposed action the draft should be available to the public at least 15 days before the meeting. A news release announcing the availability of the draft may also be issued when it is filed with EPA.

d. *Agency Review.* After review and evaluation of comments received the district engineer will finalize the Phase I or II GDM including preparation of the final EIS supplement within the Main Report or as a separate final EIS supplement. Comments and responses will be handled in accordance with paragraph 19c and Appendix A. Eleven (11) copies of the final Phase I or Phase II GDM will be transmitted to the division engineer for review and processing. Depending on the level of approval of the proposed action, either eight (8) or three (3) copies will be sent to HQDA (DAEN-CWP-E, C, or W; or DAEN-CWE-BB as appropriate) WASH DC 20314, and three or eight for the division engineer. After review the division engineer will file the final Phase I or II GDM and EIS supplement or separate final EIS supplement with EPA in accordance with paragraph 17 for those AE&D actions which the division engineer has approval authority. Copies of the transmittal letter will be provided to OCE and the district engineer. Appropriate elements within OCE will review the Final Phase I or II GDM and EIS supplement or separate final EIS supplement and file it with EPA for those AE&D actions requiring OCE approval with a copy provided to ASA(CW). Legislative AE&D Planning Reports will be processed similar to survey studies as discussed in paragraph 1 of this appendix.

e. *Final Review.* Letters of comment received on the final Phase I GDM and EIS supplement may be answered by OCE or the district engineer depending on whether the Phase I GDM is legislative or administrative. In the case of an Administrative Phase

I GDM, five (5) copies of all incoming letters with the district engineers reply, as appropriate, together with a draft of the Record of Decision will be submitted to the appropriate Corps office which filed the final EIS supplement. In the case of a Legislative Phase I GDM, processing will be similar to Survey Reports discussed in paragraph 1. For Phase II GDM, letters of comment will be answered by the district engineer. Five (5) copies of all incoming letters with the district engineer's reply together with a draft Record of Decision will be submitted to the appropriate Corps office which filed the final EIS supplement. After review of the NEPA documents and comments and responses the appropriate Corps Official or ASA(CW) will sign the Record of Decision and approve the action. A letter of issuance together with a copy of the Record of Decision shall be sent to the Washington office of EPA and a copy provided to the concerned Regional Administrator. The district engineer shall provide copies of the Record of Decision to agencies, organizations and members of the public known to have an interest in the proposed action.

4. *Projects in a Continuing Construction Category.*

a. *General.* District engineers will review the existing filed NEPA document(s) covering the proposed construction project to determine if there are any significant environmental impacts resulting from design changes or any new circumstances which have occurred since completion of the Phase II GDM. If there are no significant impacts or new circumstances, no further NEPA documentation is required. However, where there are significant impacts resulting from design changes or new circumstances have occurred, a draft and final EIS supplement as discussed in paragraph 11b will be prepared. EIS for projects in a construction category without an EIS having been previously filed will be prepared in accordance with 40 CFR Part 1502.

b. *Preparation and Draft Review.* As soon as practicable after the district engineer makes a determination to prepare an EIS if one was not previously filed or EIS supplement for the proposed construction project, a Notice of Intent (as discussed in paragraph 16) will be prepared and published in the FEDERAL REGISTER. Following the guidance discussed in 40 CFR Part 1502, the district engineer will prepare the draft EIS or EIS supplement and circulate it to agencies, groups and individuals on the mailing list known to have an interest in the project for review and comment. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 17. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-CWO-C or CWE-BB, as appropriate) WASH DC 20314, and three (3) to the division engineer). Only three (3) copies will be sent to the division engineer for those actions which the division engineer has approval authority. District engineers shall insure that the draft EIS or EIS supplement will be filed with EPA no earlier than they are also circulated to parties on the project mailing list. If a public meeting is held in connection with the proposed action the draft EIS should be made available to the public at least 15 days before the meeting. A notice announcing the availability of the draft will be sent to all others on the project mailing list. Appropriate news media may also be notified when the draft is filed with EPA.

c. *Agency Review.* After receipt and evaluation of comments received the district engineer will prepare the final EIS or final EIS Supplement. Depending on the level of approval of the proposed action, either eight (8) or three (3) copies will be sent to HQDA (DAEN-CWO-C or CWE-BB, as appropriate) WASH DC 20314, and three or eight for the division engineer. After review the appropriate Corps office will file the final EIS or EIS supplement in accordance with paragraph 17. A copy of the final EIS will be sent to ASA (CW) for actions approved at OCE. A copy of the final EIS will be provided to appropriate elements in OCE for actions approved at the division level. OCE or the division engineer shall insure that the final is filed no earlier than it is also circulated by the district engineer to parties on the project mailing list.

d. *Final Review.* Letters of comment on the final EIS will be answered by the district engineer on an individual basis. Five (5) copies of the incoming letters and the district engineer's reply together with a draft of the Record of Decision will be submitted to the appropriate Corps office filing the final EIS. After review of the NEPA documents and comments and responses, the appropriate Corps official will sign the Record of Decision and approve the project. A copy of the signed Record of Decision will be sent to appropriate Corps offices. A letter of issuance together with a copy of the Record of Decision shall be sent to the Washington office of EPA and a copy provided to the concerned Regional Administrator. The district engineer shall provide copies of the Record of Decision to agencies, organizations and members of the public known to have an interest in the project.

5. *Completed Projects in an Operation and Maintenance Category.*

a. *General.* District engineers will review operation and maintenance (O&M) activities to determine if the final EIS filed when the project was authorized adequately discusses the proposed action. If the environmental effects of the O&M actions have not changed significantly, or no new circumstances have occurred, no additional EIS

documentation will be required. If the review indicates that there may be significant impacts resulting from changes in the proposed O&M action or new circumstances have occurred, an EA or draft EIS supplement will be prepared. Projects completed prior to NEPA or completed projects without a final EIS will require an EA or EIS covering the proposed O&M activity as discussed in paragraph 6d or 7c. The EIS will follow the format outlined in 40 CFR 1502. Consideration should be given to the use of a program EIS to group similar types of O&M activities as discussed in paragraph 11c. A separate O&M EIS should be prepared where the activity is unique or where substantial environmental controversy presently exists or can reasonably be expected to exist.

b. *Preparation and Draft Review.* As soon as practicable after the district engineer makes a determination to prepare an EIS or EIS supplement for the proposed O&M action a Notice of Intent (as discussed in paragraph 16) will be prepared and published in the FEDERAL REGISTER. Following the guidance discussed in 40 CFR 1502, the district engineer will prepare the draft EIS or EIS Supplement and circulate it for review and comment to agencies, groups and individuals on the project mailing list known to have an interest in the project. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 17. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-CWO-M) WASH DC 20314, and three to the division engineer). District engineers shall insure that the draft EIS will be filed with EPA no earlier than they are also circulated to parties on the project mailing list. A notice of availability of the draft EIS will be sent to all others on the mailing list and appropriate news media.

c. *Agency Review.* After receipt and evaluation of comments received the district engineer will prepare the final EIS or final EIS Supplement. Depending on the level of approval of the proposed action, either eight (8) or three (3) copies will be sent to HQDA (DAEN-CWO-M or CWE-BB, as appropriate) WASH DC 20314, and three or eight for the division engineer. After review the appropriate Corps office will file the final EIS or EIS supplement in accordance with paragraph 17. A copy of the final EIS will be sent to ASA (CW) for actions approved at OCE. A copy of the final EIS will be provided to appropriate elements in OCE for actions approved at the division level. OCE or the division engineer shall insure that the final is filed no earlier than it is also circulated by the district engineer to parties on the project mailing list.

d. *Final Review.* Letters of comment on the final EIS will be answered by the district engineer on an individual basis. Five (5) copies of the incoming letters and the district engineer's reply together with a draft of the Record of Decision will be submitted to the appropriate Corps office filing the final EIS. After review of the NEPA documents and comments and responses, the appropriate Corps official will sign the Record of Decision and approve the action. A copy of the signed Record of Decision will be sent to the appropriate Corps offices. A letter of issuance together with a copy of the Record of Decision shall be sent to the Washington office of EPA and a copy provided to the concerned Regional Administrator. The district engineer shall provide copies of the Record of Decision to agencies, organizations and members of the public known to have an interest in the project.

6. *Regulatory Permits.* See Appendix B.

7. *Real Estate Management and Disposal Actions.*

a. *General.* Whenever the district engineer determines that a proposed real estate management and disposal action is a major Federal action having a significant effect upon the human environment, an EIS will be prepared and processed as follows:

b. *Preparation and Draft Review.* As soon as practicable after the district engineer makes a determination to prepare an EIS for the proposed action, a Notice of Intent (as discussed in paragraph 16) will be prepared and published in the FEDERAL REGISTER. Following the guidance discussed in 40 CFR Part 1502, the district engineer will prepare the draft EIS and circulate it for review and comment to agencies, groups and individuals on the project mailing list known to have an interest in the proposed action. Five (5) copies shall be sent directly to EPA for filing in accordance with paragraph 17. Six (6) copies will be transmitted to higher authority (three to HQDA (DAEN-REM-I) WASH DC 20314, and three to the division engineer). District engineers shall insure that the draft EIS will be filed with EPA no earlier than they are also circulated to parties on the mailing list. A notice of availability of the draft EIS will be sent to all others on the mailing list and appropriate news media.

c. *Agency Review.* After receipt and evaluation of comments received, the district engineer will prepare the final EIS. Eight (8) copies of the final EIS will be transmitted to the division engineer for review and processing. After review, the division engineer will file the final EIS with EPA in accordance with paragraph 17. A copy of the final EIS and transmittal letter will be provided DAEN-REM-I and the district engineer. The division engineer shall insure that circulation of the final EIS by the district engineer will be completed no later than when it is filed with EPA.

d. *Final Review.* Letters of comment on the final EIS will be answered by the district engineer on an individual basis. Five (5) copies of the incoming letters and the district engineer's reply together with a draft of the Record of the Decision will be submitted to the division engineer. After review of the NEPA documents and comments and responses and approval of the action, the division engineer will sign the Record of the Decision. A copy of the Record of Decision will be returned to the district engineer with a copy provided to DAEN-REM-I. A letter of issuance together with a copy of the Record of Decision shall be sent to the Washington office of EPA with a copy to the concerned Regional Administrator. The district engineer shall provide copies of the Record of Decision to agencies, organizations and interested members of the public.

8. *EIS Processing Instruction for ASA (CW) Review.* Appropriate elements within OCE will provide a copy of the final EIS or final EIS Supplement to ASA (CW) at the time of filing with EPA for Corps actions requiring OCE approval except for survey reports and legislative planning reports which will be furnished to ASA (CW) for transmittal to Congress at a later date. These actions include all Continuing Authority Studies and certain AE&D Planning and Design Reports and certain projects in a construction category. ASA (CW) will not require copies of the final EIS for Corps actions which are filed by the division or district engineer.

[45 FR 56761, Aug. 25, 1980; 46 FR 14746, Mar. 2, 1981]

Appendix D—Categorical Exclusions for Real Estate Management and Disposal Actions

In accordance with 40 CFR 1508.4 the following actions, which individually or cumulatively have no significant impact on the quality of the human environment, are excluded from the requirement for preparation of an EA or EIS. Nevertheless, district engineers should be alert for extraordinary circumstances where normally excluded actions would have significant environmental effects and thus require an EA or EIS. Also, district engineers in their discretion may require the preparation of an EA or an EIS when a decision on the action in question could result in public controversy or potential litigation, or if for some other reason environmental review and analysis prior to reaching a decision would serve the public interest. Note: Even though an EA or EIS is not legally mandated for any Federal action falling within one of the following "categorical exclusions", that fact does not exempt any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS.

1. Grant of leases and licenses to accomplish the highest and best use or authorized project purposes for:

a. Agricultural and grazing purposes.

b. Public park and recreational purposes.

c. Commercial concession purposes.

d. Private recreational purposes.

e. Miscellaneous purposes of a minor nature such as lakeshore protection and improvements, steps, lights etc.

f. Use and occupancy of existing buildings, facilities, and real property.

2. Grants of leases, licenses, permits and easement, for use of excess or surplus real property.

3. Grants of leases for Government-owned housing.

4. Exchanges of excess real property and interests therein for property required for project purposes.

5. Grant easement for rights-of-way which do not involve significant disturbances to earth, air, or water:

a. Minor access roads or streets.

b. Minor electric power, telephone, telegraph and other communication lines.

c. Minor oil and gas pipelines; water, sewer, and irrigation pipelines, pumping plants and appurtenant facilities.

d. Minor canals, ditches, dikes, retarding structures, etc. used in connection with fish and wildlife conservation and development programs.

6. Grants of consents to use Government-owned easement areas.

7. Grants of licenses issued pursuant to the Secretary of the Army's general administrative authority which do not involve significant disturbances to earth, air or water:

a. Telephone and telegraph facility purposes.

b. Removal of sand, gravel, rock, and other borrow material.

c. Oil and gas seismic and gravitymeter survey and exploration purposes.

8. Grants of permits for archeological and historical investigations.

9. Renewal and minor amendment of existing leases, licenses, easements, permits, consents, and other documents evidencing authority to use Government-owned real property.

10. Reporting excess or surplus real property to the General Services Administration for disposal.

11. Disposal of lands or release of deed restrictions to cure encroachments.

12. Disposal of excess easement areas to the underlying fee owner.

13. Disposal of existing buildings and improvements for off-site removal.
14. Sale of existing cottage site areas.
15. Return of Public Domain lands to the Department of the Interior.
16. Transfer or permit of lands to other Federal agencies (NEPA compliance is the responsibility of the other Federal agency).

PART 236—WATER RESOURCE POLICIES AND AUTHORITIES: CORPS OF ENGINEERS PARTICIPATION IN IMPROVEMENTS FOR ENVIRONMENTAL QUALITY

Sec.
236.1 Purpose.
236.2 Applicability.
236.3 References.
236.4 Background.
236.5 Policy and procedure.
236.6 Other agencies EQ measures.

AUTHORITY: Pub. L. 738, 74th Cong.; Pub. L. 89-72; Pub. L. 91-190.

SOURCE: 45 FR 28714, Apr. 30, 1980, unless otherwise noted.

§ 236.1 Purpose.

This regulation provides guidance for including Environmental Quality (EQ) measures in Corps of Engineers water resource development plans.

§ 236.2 Applicability.

This regulation is applicable to all OCE elements and field operating activities having Civil Works responsibilities.

§ 236.3 References.

(a) PL 89-72
(b) ER 1105-2-10
(c) ER 1105-2-200

§ 236.4 Background.

(a) The role of the Corps of Engineers in the development of water and related land resources has gradually broadened over the past century. Starting with the development of navigation on the Mississippi River in 1824, the Corps role has grown to encompass, among others, flood control, beach erosion control and hurricane protection, hydroelectric power, recreation, water supply, water quality, fish and wildlife and low-flow augmentation. Laws, executive orders, and national policies promulgated in the past decade require that the quality of the environment be protected and, where possible, enhanced as the nation grows. As a result, the Federal role in EQ, including the Corps, has continued to broaden. Balancing economic and environmental interests is a major requirement to be considered in the planning of all Corps projects.

(b) Enhancement of the environment is an objective of Federal water resource programs to be considered in the planning, design, construction, and operation and maintenance of projects. Opportunities for enhancement of the environment are sought through each of the above phases of project development. Specific considerations may include, but are not limited to, actions to preserve or enhance critical habitat for fish and wildlife; maintain or enhance water quality; improve streamflow; preservation and restoration of certain cultural resources, and the preservation or creation of wetlands.

(c) The 1105-2-200 series of Engineer Regulations describe the procedures to be followed in developing water resource plans. These procedures require the establishment of planning objectives (generally encompassing a combination of National Economic Development (NED) and EQ outputs), and evaluation of alternative plans to meet those objectives to differing degrees. With respect to the recommendation of measures for Corps implementation, ER 1105-2-200 states that, "If the selected plan or a portion thereof is not within existing Corps implementation authority, but is responsive to the planning objectives established for the study, the reporting officer may recommend Federal (Corps) participation." The ER further states that the basis for and extent of such participation is to be specified, including the precedent setting aspects of the recommendation, and further, that such recommendations are to be coordinated through DAEN-CWP before commitments are made to states or local interests. This regulation expands upon that policy and provides operational policies and criteria which will allow the field to recommend authorization for implementation of certain EQ measures.

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§ 236.5 Policy and procedure.

The following policies and procedures set forth criteria to be applied in determining when EQ measures may be recommended for implementation by the Corps.

(a) *Policy*—(1) *Achievement of specified, study authority planning objectives.* Recommended plans must include measures for accomplishment of the primary purposes authorized by Congress.

(2) *Relationship of EQ measures to a Corps water resource development.* Measures proposed for EQ must enhance, preserve or restore the environment of the study area. EQ opportunities created as a result of meeting study authority purposes should be pursued and, as appropriate, included in plans for Corps implementation. In addition, the recommended plan may also include separable EQ measures to meet established planning objectives. *Such separable EQ measures for Corps implementation must be related to, or take advantage of, opportunities created by a water resource development to be recommended for implementation by the Corps of Engineers.*

(3) *Justification.* Recommended plans must be justified on the basis that combined beneficial NED and EQ effects outweigh combined adverse NED and EQ effects.

(4) *Cost sharing.* Some features of plans required to foster EQ objectives in the Corps of Engineers program have well-defined laws or policies which establish cost sharing requirements. For instance, Pub. L. 89-72, as amended, defines cost sharing requirements for fish and wildlife enhancement. However, there are other features which may not be defined by law or policy. In those instances, cost sharing will be based on an analogy with established cost sharing policies or other similar Federal programs as described in the Catalog of Federal Domestic Assistance. Cost sharing for EQ measures for which the Corps has no standard policy will be approved by HQDA (DAEN-CWP-E, C or W), WASH DC 20314, prior to proposing cost sharing to local interests.

(b) *Procedures for approval*—(1) *Without advance OCE approval.* The reporting officer may recommend separable EQ measures that satisfy any one of the following criteria:

(i) Implemented on lands required for the water resource development;

(ii) Required to complete or more fully develop proposed EQ measures partly on lands, including mitigation lands, required for the water resource development;

(iii) More cost effective to implement or manage when directly integrated with the implementation or management of the water resource development.

(2) *With advance approval.* Other separable EQ measures may be recommended with advance approval of the Director of Civil Works through the intensive management program (ER 1105-2-10). The appropriateness for including such measures will be based upon a consideration of factors which may include, but are not limited to:

(i) Level of significance of the EQ resource.

(ii) Proximity to the proposed water resource development.

(iii) Acceptability and support for Corps implementation.

(iv) Certainty of the pending loss or significant degradation of the EQ resource in the absence of implementing the proposed EQ measure.

(v) Relationship of the EQ measures to implementing the proposed water resources development.

(vi) Relationship of the EQ measures to assigned missions of other agencies and the capability for timely implementation by these agencies.

(vii) Cost effectiveness.

§ 236.6 Other agencies EQ measures.

The selected plan may include EQ measures not proposed for Corps implementation, but to be accomplished through other Federal programs or by local interests. Planning reports including such measures will discuss how they would impact on the recommended plan, and how they may be implemented by the appropriate Federal agency or the local interests. However, implementation of such measures will not be required as local cooperation for the works proposed for Corps implementation.

PART 238—WATER RESOURCES POLICIES AND AUTHORITIES: FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

Sec.

238.1 Purpose.
238.2 Applicability.
238.3 References.
238.4 Definitions.
238.5 Comprehensive planning.
238.6 General policy.
238.7 Decision criteria for participation.
238.8 Other participation.
238.9 Local cooperation.
238.10 Coordination with other Federal agencies.

AUTHORITY: Pub. L. 738, 74th Congress, 33 U.S.C. 701a.

SOURCE: 45 FR 71801, Oct. 30, 1980, unless otherwise noted.

§ 238.1 Purpose.

This regulation provides policies and guidance for Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authorities and storm sewer systems to be accomplished by local interests.

§ 238.2 Applicability.

This regulation is applicable to all OCE elements and all field operating acitivities having Civil Works responsibilities.

§ 238.3 References.

(a) Executive Order 11988—Floodplain Management, dated 24 May 1977.

(b) U.S. Water Resources Council, Floodplain Management Guidelines, (43 FR 6030), to February 1978.

(c) ER 1105-2-811.

(d) ER 1140-2-302.

(e) ER 1140-2-303.

(f) EP 1165-2-2.

§ 238.4 Definitions.

For purposes of this regulation the following definitions apply:

(a) "Urban areas" are cities, towns, or other incorporated or unincorporated political subdivisions of States that:

(1) Provide general local government for specific population concentrations, and,

(2) Occupy an essentially continuous area of developed land, containing such structures as residences, public and commercial buildings, and industrial sites.

(b) "Flood damage reduction works in urban areas" are the adjustments in land use and the facilities (structural and non-structural) designed to reduce flood damages in urban areas from overflow or backwater due to major storms and snowmelt. They include structural and other engineering modifications to natural streams or to previously modified natural waterways. Flood damage reduction works are designed to modify flood behavior typified by temporary conditions of inundation of normally dry land from the overflow of rivers and streams or from abnormally high coastal waters due to sever storms.

(c) "Storm sewer systems" are the facilities in urban areas designed to collect and convey runoff from rainfall or snowmelt in the urban area to natural water courses or to previously modified natural waterways. They include storm drains, inlets, manholes, pipes, culverts, conduits, sewers and sewer appurtenances, on-site storage and detention basins, curbs and gutters, and other small drainageways that remove or help to manage runoff in urban areas. Storm sewer systems are designed to solve storm drainage problems, which are typified by excessive accumulation of runoff in depressions; overland sheet flow resulting from rapid snowmelt or rainfall; and excessive accumulation of water at the facilities listed in this paragraph because of their limited capacity.

§ 238.5 Comprehensive planning.

Coordinated comprehensive planning at the regional or river basin level, or for an urban or metropolitan area, can help to achieve solutions to flood problems that adequately reflect future changes in watershed conditions, and help to avoid short-sighted plans serving only localized situations. This planning is particularly important in areas where significant por-

tions of a watershed are expected to be urbanized in the future. Changes in land use may result in major alterations of the runoff characteristics of the watershed. Hydrologic changes must be projected for the period of analysis. In this effort, responsible local planning organizations should provide information and assist the Corps in development of projected land uses and expected practices for collection and conveyance of runoff over the period of analysis. Conversely, the Corps may be able to provide non-Federal interests with valuable information about water related consequences of alternative land uses and drainage practices.

§ 238.6 General policy.

(a) Satisfactory resolution of water damage problems in urban areas often involves cooperation between local non-Federal interests and the Federal flood control agencies. In urban or urbanizing areas, provision of a basic drainage system to collect and convey the local runoff to a stream is a non-Federal responsibility. This regulation should not be interpreted to extend the flood damage reduction program into a system of pipes traditionally recognized as a storm drainage system. Flood damage reduction works generally address discharges that represent a serious threat to life and property. The decision criteria outlined below therefore exclude from consideration under flood control authorities small streams and ditches with carrying capacities typical of storm sewer pipes. Location of political boundaries will not be used as a basis for specifying project responsibility. Project responsibilities can be specified as follows:

(1) Flood damage reduction works, as defined in this regulation, may be accomplished by the Corps of Engineers.

(2) Construction of storm sewer systems and components thereof will be a non-Federal responsibility. Non-Federal interests have a responsibility to design storm sewer systems so that residual damages are reduced to an acceptable level.

(b) Consideration will be given to the objectives and requirements of Executive Order 11988 (reference § 238.3(a)) and the general guidelines therefor by the U.S. Water Resources Council (reference § 238.3(b)).

§ 238.7 Decision criteria for participation.

(a) *Urban Flood Control.* (1) Urban water damage problems associated with a natural stream or modified natural waterway may be addressed under the flood control authorities downstream from the point where the flood discharge of such a stream or waterway within an urban area is greater than 800 cubic feet per second for the 10-percent flood (one chance in ten of being equalled or exceeded in any given year) under conditions expected to prevail during the period of analysis. Those drainage areas which lie entirely within the urban area (as established on the basis of future projections, in accordance with § 238.5 of this part), and which are less than 1.5 square miles in area, shall be assumed to lack adequate discharge to meet the above hydrologic criteria. Those urban streams and waterways which receive runoff from land outside the urban area shall not be evaluated using this 1.5 square mile drainage area criterion.

(2) A number of conditions within a drainage area may limit discharges for the 10-percent flood, without proportionately reducing discharges for larger floods, such as the one-percent flood. Examples include the presence of extremely pervious soils, natural storage (wetlands) or detention basins or diversions with limited capacity. Other conditions could result in a hydrological disparity between the 10- and one-percent flood events.

(3) Division Engineers, except for NED and POD, are authorized to grant exceptions to the 800 cfs, 10-percent flood discharge criterion specified in this § 238.7(a)(1) whenever both of the following criteria are met:

(i) The discharge for the one-percent flood exceeds 1800 cfs; and

(ii) The reason that the 10-percent flood discharge is less than 800 cfs is attributable to a hydrologic disparity similar to those described in § 238.7(a)(2).

Requests for exceptions to the hydrologic criterion contained in § 238.7(a)(1) from NED and POD

should be submitted to HQDA (DAEN-CWP) WASH DC 20314.

(4) Flood damage reduction works must conform to the definition in § 238.4(b) and must be justified based on Corps of Engineers evaluation procedures in use at the time the evaluation is made. Flood reduction measures, such as dams or diversions, may be located upstream of the particular point where the hydrologic criteria (and area criterion, if appropriate) are met, if economically justified by benefits derived within the stream reach which does qualify for flood control improvement. Similarly, the need to terminate flood control improvements in a safe and economical manner may justify the extension of some portions of the improvements, such as levee tiebacks, into areas upstream of the precise point where Federal flood control authorities become applicable.

(b) *Storm sewer system.* Water damage problems in urban areas not consistent with the above criteria for flood control will be considered to be a part of local storm drainage to be addressed as part of the consideration of an adequate storm sewer system. The purpose of this system is to collect and convey to a natural stream or modified natural waterway the runoff from rainfall or snowmelt in the urbanized area.

(c) *Man-made conveyance structures.* (1) Man-made conveyance structures will be assumed to be a part of storm sewer systems except when: (i) A natural stream has been or is to be conveyed in the man-made structure; or (ii) The man-made structure is a cost-effective alternative to improvement of a natural stream for flood damage reduction purposes or is an environmentally preferable and economically justified alternative. Water damage associated with inadequate carrying capacity of man-made structures should be designated as a flood problem or a local drainage problem in a manner consistent with the structure's classification as flood damage reduction works or a part of a storm sewer system.

(2) Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works. Flows discharged into a natural or previously modified natural waterway for the purpose of conveying the water away from the urbanized area will be assumed to be a part of the flow thereof regardless of quality characteristics.

(d) *Joint Projects.* Certain conditions may exist whereby the Corps of Engineers and the Department of Housing and Urban Development (HUD), or another Federal agency, could jointly undertake a project that would be impractical if one agency were to undertake it alone. The Corps may, for example, under provisions of Section 219 of the Flood Control Act of 1965, design or construct a project that is part of a larger HUD plan for an urban area (see ER 1140-2-302). Such efforts should be undertaken only when requirements cannot be handled better by one agency acting alone. If a joint effort is preferable, then the Corps may participate as required.

(e) *Disagreements.* If a disagreement arises between the Corps and another Federal agency that cannot be resolved at the field level, the matter will be forwarded to HQDA (DAEN-CWR) WASH DC 20314 for guidance.

§ 238.8 Other participation.

In addition to providing flood damage reduction works in urban areas, the Corps may provide related services to State and local governments on a reimbursable basis. Under Title III of the Inter-governmental Cooperation Act of 1968, specialized or technical services for which the Corps has specific expertise may be furnished only when such services cannot be procured reasonably and expeditiously from private firms (see ER 1140-2-303).

§ 238.9 Local cooperation.

(a) Cost sharing and other provisions of local cooperation shall be in conformity with applicable regulations for structural and non-structural flood damage reduction measures.

(b) Responsible non-Federal entities will be required to provide satisfactory assurances that they will adopt, enforce, and adhere to a sound, compre-

hensive plan for flood plain management for overflow areas of communities involved. To this end, District Engineers will inform HUD, and other concerned Federal and non-Federal planning and governing agencies, of flood plain management services available under Section 206 of the Flood Control Act of 1960, as amended (33 USC 709a).

§ 238.10 Coordination with other Federal agencies.

In conducting flood damage reduction studies, reporting officers shall comply with the 1965 Agreement between the Soil Conservation Service and the Corps (contained in EP 1165-2-2) in determining the responsible Federal agency. Corps personnel should also keep abreast of the public works programs administered by other Federal agencies, such as the Environmental Protection Agency, the Department of Housing and Urban Development, Farmers Home Administration and the Department of Commerce, in order to coordinate flood control improvements with storm sewer system improvements and to avoid program overlap. Coordination of planning activities with A-95 clearinghouses will help to achieve this objective (see ER 1105-2-811).

PART 239—WATER RESOURCES POLICIES AND AUTHORITIES: FEDERAL PARTICIPATION IN COVERED FLOOD CONTROL CHANNELS

Sec.

239.1 Purpose.
239.2 Applicability.
239.3 References.
239.4 Policy.
239.5 Engineering considerations.
239.6 Level of protection.
239.7 Separation of flood control works from urban drainage.
239.8 Cost sharing.
239.9 Effective date.

AUTHORITY: Pub. L. 738, 74th Congress 33 U.S.C. 701a.

SOURCE: 43 FR 47470, Oct. 13, 1978; 44 FR 36175, June 21, 1979, unless otherwise noted.

§ 239.1 Purpose.

This regulation establishes policy for determining the extent of Federal participation in covered flood control channels.

§ 239.2 Applicability.

This regulation applies to all OCE elements and all field operating agencies having civil works responsibilities.

§ 239.3 References.

(a) Executive Order 11988, Floodplain Management, 24 May 1977.
(b) ER 1105-2-200.
(c) ER 1165-2-21.

§ 239.4 Policy.

Projects will be formulated and evaluated in accordance with the policies and procedures described in ER 1105-2-200. If, during the planning process, it appears that covered flood control channels are desirable, reporting officers may evaluate them and include them when they best serve the public interest. Selection of the plan which best serves the public interest is based upon the ability of the plan to meet planning objectives, the contributions which the plan makes to the National Economic Development (NED), Environmental Quality (EQ), Regional Development (RD) and Social Well Being (SWB) accounts, and the public response to alternative plans. Thus, covered flood control channels may be proposed if they are desired by the public and (a) increase net EQ and/or NED benefits; or, (b) reduce adverse effects on RD or SWB without incurring an unjustified loss in net NED or EQ benefits.

§ 239.5 Engineering considerations.

Reports on proposals to provide covered channels shall include a discussion of the following matters.

(a) Impacts of sudden reduction in discharge and increased upstream channel stages when the channel entrance is submerged. This discussion shall include the effects resulting from the SPF.

(b) Dangers of rupture resulting from pressurization.

(c) Features provided to prevent human ingress and their impact on project functions.

(d) Effect of the cover on inspection and maintenance costs.

(e) Features provided for pressure release and air venting.

(f) Need for a storm warning system.

(g) Facilities provided to divert flows exceeding the design flow.

§ 239.6 Level of protection.

Evaluation of the above items may indicate that submergence of entrances to covered channels may have significant impacts on the level of flooding. The requirements of EO 11988 and the significance of the resulting flood damage may require that the covered portion of the channel be enlarged to provide capacity to pass the SPF. If inclusion of SPF capacity on the covered portions of the project cannot be justified, the added capacity may be reduced to the extent that the project will not increase upstream stages resulting from the SPF when compared to the without-project condition. If this capacity is still not feasible, covered channels shall not be recommended.

§ 239.7 Separation of flood control works from urban drainage.

Covered channels are likely to be considered in boundary areas demarking urban drainage and flood control. Reporting officers shall apply the policies given in ER 1165-2-21 to separate flood control facilities from urban drainage facilities.

§ 239.8 Cost sharing.

At local protection projects local interests are required to provide all lands, easements, rights-of-way and all alterations and relocations of utilities, streets, bridges, buildings, storm drains and other structures and improvements; hold and save the United States free from damages due to the construction works except damages due to the fault or negligence of the United States or its contractor; and assume operation and maintenance of the works after completion. In addition, local interests are required to provide additional cost sharing to reflect special local benefits or betterments. Such additional special cost sharing will not be required for covered channels when the addition of the cover increases net NED flood control benefits when compared to the open channel or when they are provided for safety in schoolyards, playgrounds, or other known play areas for juveniles. However, the separable cost of providing covers for mitigating SWB or RD impacts or to provide areas for public or private uses such as parking, or the provision of areas for recreation development, etc., will be assigned to local interests. The separable cost of recreational facilities to be constructed on or adjacent to the cover, i.e. picnic facilities, etc., are eligible for Federal participation in accordance with cost-sharing policies for recreation facilities at local protection projects. Cost-sharing policies for project features which are included to make positive contributions to the EQ account are being developed. Until such policies are developed, proposals to cover channels on this basis will be coordinated with HQDA (DAEN-CWP), Washington, D.C. 20314.

§ 239.9 Effective date.

These regulations are applicable to all projects not approved by OCE prior to the date of this regulation.

PART 240—WATER RESOURCES POLICIES AND AUTHORITIES: IMPLEMENTATION OF EXECUTIVE ORDER 11988 ON FLOODPLAIN MANAGEMENT

Sec.

240.1 Purpose.
240.2 Applicability.
240.3 References.
240.4 Definitions.
240.5 Background.
240.6 Objective of the Order.
240.7 General policy.
240.8 General procedures.
240.9 Assessment and evaluation of Impacts.
240.10 Minimize.
240.11 Restore and preserve.
240.12 Regulatory functions program.
240.13 Real estate activities.
240.14 Reporting requirements and public involvement.
240.15 Application of EO to civil works program.

AUTHORITY: EO 11988, 43 FR 6030, February 10, 1978.

SOURCE: 44 FR 28524, May 15, 1979; 44 FR 36175, June 21, 1979, unless otherwise noted.

§ 240.1 Purpose.

The purpose of this regulation is to set forth general policy and guidance for Corps of Engineers implementation of Executive Order 11988, Floodplain Management, as it pertains to the planning, design and construction of Civil Works projects, to the activities under the operation and maintenance and to the regulatory and real estate programs of the Corps.

§ 240.2 Applicability.

This regulation is applicable to all OCE elements and to all field operating agencies having Civil Works responsibilities.

§ 240.3 References.

(a) Executive Order 11988, *Floodplain Management*, May 24, 1977.
(b) Water Resources Council, Floodplain Management Guidelines for Implementing E.O. 11988, February 10, 1978 (43 FR 6030).
(c) Water Resources Council, *A Unified National Program for Flood Plain Management*, July 1976.
(d) Pub. L. 84-99
(e) 33 CFR Parts 320 through 329 (42 FR 37121-37164, July 19, 1977).
(f) ER 1105-2-50.
(g) ER 1105-2-200.
(h) ER 1105-2-210.
(i) ER 1105-2-220.
(j) ER 1105-2-230.
(k) ER 1105-2-240.
(l) ER 1105-2-250.
(m) ER 1105-2-351.
(n) ER 1105-2-502.
(o) ER 1105-2-507.
(p) ER 1105-2-800.
(q) ER 1105-2-811.
(r) ER 1120-2-117.

§ 240.4 Definitions.

(a) "Action" is any Federal activity, including: (1) Acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) "Base flood" is that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

(c) "Base floodplain" is the one percent chance floodplain.

(d) "Channel" a natural or artificial watercourse of perceptible extent with a definite bed and banks to confine and conduct continuously or periodically flowing water.

(e) "Critical action" any activity for which even a slight chance of flooding would be too great. The critical action floodplain is defined as the 500 year floodplain (0.2 percent chance floodplain).

(f) "Flood fringe" that portion of the floodplain outside of the regulatory floodway (often referred to as "floodway fringe").

(g) "Floodplain" the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum that area subject to a one percent chance of flooding in any given year.

(h) "Minimize" is to reduce to the smallest possible amount or degree.

(i) "Practicable" is capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.

(j) "Preserve" is to prevent adverse modification to the existing floodplain environment or to maintain it.

(k) "Restore" is to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(l) "Regulatory floodway" the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner, i.e. unconfined or unobstructed either horizontally or vertically to provide for the discharge of the base flood so the cumulative increase in water surface elevation from encroachment does not exceed one foot as set by the NFIP.

(m) "Natural and beneficial values" include but are not limited to water resources values (natural moderation of floods, water quality maintenance, and ground water recharge), living resource values (fish, wildlife and plant resources), cultural resource values (open space, natural beauty, scientific study, outdoor education and recreation) and cultivated resource values (agriculture, aquaculture and forestry).

(n) "Direct support" of floodplain development is an action in the floodplain that encourages, allows, serves or otherwise facilitates additional floodplain development.

(o) "Facility" is any man-made or manplaced item other than a structure.

(p) "Structures" walled or roofed buildings, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).

§ 240.5 Background.

Executive Order 11988, Floodplain Management, signed May 24, 1977, revoked and replaced Executive Order 11296 issued August 10, 1966. The new Order adds emphasis to the environmental aspects of floodplain management that was not present in Executive Order 11296. The Order requires Federal agencies to recognize the significant values of floodplains and to consider the public benefits that would be realized from restoring and preserving floodplains. The conceptual framework of floodplain management as set out in § 240.3(c) is to be incorporated in agency procedures. The unified program has as a goal sound floodplain management that embodies the "wise use, conservation, development and utilization of interrelated land and water resources to serve objectives of economic efficiency, environmental quality and social well-being as consonant with responsibilities assigned to respective levels of government by law." Floodplain Management Guidelines for Implementing EO 11988 were published in the FEDERAL REGISTER on February 10, 1978 (43 FR 6030) (§ 240.3(c)). The guidelines were developed for the purpose of explaining key terms in the EO, floodplain management concepts and procedures for complying with the Order. The guidelines have been utilized in preparing this Corps of Engineers policy regulation and other affected Corps regulations and procedures will subsequently be revised to reflect the policies and procedures contained herein.

§ 240.6 Objective of the Order.

The Executive Order has as an objective the avoidance, to the extent possible, of long and short term adverse impacts associated with the occupancy and modification of the base floodplain and the avoidance of direct and indirect support of development in the base floodplain wherever there is a practicable alternative. Under the Order, the Corps is required to provide leadership and take action to:

(a) Avoid development in the base floodplain unless it is the only practicable alternative;

(b) Reduce the hazard and risk associated with floods;

(c) Minimize the impact of floods on human safety, health and welfare; and

(d) Restore and preserve the natural and beneficial values of the base floodplain.

§ 240.7 General policy.

It is the policy of the Corps of Engineers to formulate projects which, to the extent possible, avoid or minimize adverse impacts associated with use of the base floodplain and avoid inducing development in the base floodplain unless there is no practicable alternative. The decision on whether a practicable alternative exists will be based on weighing the advantages and disadvantages of floodplain sites and non-floodplain sites. Factors to be taken into consideration include, but are not limited to, conservation, economics, aesthetics, natural and beneficial values served by floodplains, impact of floods on human safety, locational advantage, the functional need for locating the development in the floodplain, historic values, fish and wildlife habitat values, endangered and threatened species, Federal and State designations of wild and scenic rivers, refuges, etc. and, in general, the needs and welfare

of the people. The test of practicability will apply to both the proposed Corps action and to any induced development likely to be caused by the action. Identification and evaluation of practicable alternatives shall include consideration of alternative sites (carrying out the proposed action outside the floodplain); alternative actions (other means which accomplish the same purpose as the proposed action); and no action. When a determination is made that no practicable alternative to undertaking an action in the floodplain exists, it will be appropriately documented and the features or qualities of the floodplain that make it advantageous over alternative non-floodplain sites shall be described and adequately supported.

§ 240.8 General procedures.

Listed below are the general procedures to be followed for implementing Executive Order 11988. These procedures are the "decision making process" and are graphically depicted in § 240.3(b). The general procedures are to be incorporated in the multiobjective planning approach under the WRC principles and standards for the planning, design and construction of civil works projects and activities under the operation and maintenance programs.

(a) Determine if the proposed action is in the base floodplain.

(b) If the action is in the base floodplain, identify and evaluate practicable alternatives to the action or to the location of the action in the base floodplain as outlined in § 240.7 of this part.

(c) If the action must be in the floodplain, advise the general public in the affected area and obtain their views and comments.

(d) Identify beneficial and adverse impacts due to the action and any expected losses of natural and beneficial floodplain values. Where actions proposed to be located outside the base floodplain will affect the base floodplain, impacts resulting from these actions should also be identified.

(e) If the action is likely to induce development in the base floodplain, determine if a practicable non-floodplain alternative for the development exists, as outlined in § 240.7 of this part.

(f) As part of the multiobjective planning approach under the Principles and Standards, determine viable methods to minimize any adverse impacts of the action including any likely induced development for which there is no practicable alternative and methods to restore and preserve the natural and beneficial floodplain values. Successive iterations of the planning process as called for in ER 1105-2-200 should be used to develop methods for minimization (§§ 240.10 and 240.11). This should include reevaluation of the "no action" alternative.

(g) If the final determination is made that no practicable alternative exists to locating the action in the floodplain, advise the general public in the affected area of the findings.

(h) Recommend the plan most responsive to the planning objectives established by the study and consistent with the requirements of the Executive Order stated in § 240.6 of this part.

§ 240.9 Assessment and evaluation of Impacts.

The determination called for in § 240.8(d) above requires an assessment of the likely adverse and beneficial impacts of an action. Impact identification and assessment apply to both the Corps action and to any induced development likely to occur in the base floodplain with the proposed action. Existing procedures and guidance for identifying, assessing and evaluating impacts are contained in ER 1105-2-240 and ER 1105-2-250 for multiobjective planning and ER 1105-2-507 for responding to NEPA requirements. These procedures are designed to ensure that all significant adverse and beneficial effects of actions are identified and measured. ER 1105-2-240 requires identifying sources of impacts, tracing impacts, describing the magnitude of impacts and specifying the location, timing, and duration of impacts. ER 1105-2-250 requires determining the beneficial and adverse contribution of each alternative plan. ER 1105-2-507 requires the identification

of impacts and effects of an action on the environment. Therefore, impact identification, assessment and evaluation procedures required by existing Corps regulations comply with the intent of the EO and should continue to be followed.

§ 240.10 Minimize.

Whenever there is no practicable alternative to undertaking an action in the floodplain, steps should be taken to minimize the impact of floods on human safety, health and welfare, beneficial floodplain values, and any induced development likely to occur as a result of the action. Minimize, by definition, is broad and open-ended; however, there is an implicit acceptance of practical limitations which makes it consistent with the Principles and Standards. All practical means and measures should be utilized to minimize any adverse impacts likely to occur because of an action in the floodplain. For example, successive iterations of the planning process should normally result in the deletion of separable segments of a plan when such segments protect undeveloped land and would likely induce development in the floodplain for which another practicable non-floodplain alternative may exist.

§ 240.11 Restore and preserve.

Restoration and preservation are methods of enhancing or maintaining the natural and beneficial values of floodplains. These are primarily environmental values falling within the broad scope of multiobjective planning of the Principles and Standards and the ER 1105-2-200 series. The implementation of actions or measures to restore or preserve floodplain values should be recommended, as appropriate, in reporting documents if they fall under existing Corps authorities. If they are not within existing authorities of the Corps, the report should describe how such measures can be implemented. Examples of actions that could be taken to restore floodplain values are as follows:

(a) Relocate non-conforming structures and facilities out of the base floodplain.

(b) Reestablish damaged floodplain ecosystems.

(c) Restore and preserve wetlands, marshes, and etc.

(d) Implement measures that will enhance fish and wildlife values.

(e) Restore and revegetate damaged beaches and dunes.

§ 240.12 Regulatory functions program.

Section 2c of the Executive Order pertains to the issuance of permits or licenses and relates to the Corps regulatory permit program. Section 2c requires agencies to: (a) Consider and evaluate flood hazards for actions in floodplains; (b) provide early public review of plans or proposals in floodplains for which the impact would not require an EIA; and (c) provide guidance to applicants to enable them to evaluate the effects of their proposal on the floodplain. § 240.3(e) is the regulation that sets forth the policies and procedures of the Corps of Engineers for review of permit applications. The general policies in the regulation provide for an evaluation of the flood hazard and the effect an action in the floodplain may have on the floodplain environment through the public interest review process described in § 320.4. The public notice process, as contained in § 325.3, is the primary method utilized by the Corps for advising the public early of potential plans or proposals in flood plains for which a permit is sought. Existing policies and procedures related to the regulatory program (§ 240.3(e)) fulfill the requirements and intent of Section 2c of Executive Order 11988 and should continue to be followed.

§ 240.13 Real estate activities.

When property in floodplains is proposed for outgrant or disposal to non-Federal public or private parties, the Corps shall reference in the outgrant or conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be appropriate. In the event the proposed use is incompatible with good floodplain management, the Corps shall consider withholding such

properties from outgrant or conveyance.

§ 240.14 Reporting requirements and public involvement.

When a determination has been made that no practicable alternative to locating an action in the floodplain exists, the EO requires the reporting of this finding. The Order requirements generally include reporting procedures that are presently being accomplished under existing Corps regulations, with some minor exceptions. The following additional information shall be included in existing reporting requirements, as appropriate, for general investigation studies, projects in engineering and design stages, studies under the special continuing authorities program, and activities under the operations and maintenance program.

(a) *Section 2(a)(2) of Executive Order.* If there is no practicable alternative to locating an action in the floodplain, a public notice shall be prepared and circulated to the general public. The notice shall include the following: (1) An explanation of why the action must be located in the floodplain; (2) a description of significant facts considered in making the determination to locate in the floodplain, including alternative sites and actions considered and any tradeoffs that were made; and (3) a statement indicating whether the proposal conforms to applicable State or local floodplain protection standards. The public notice issued by the District Engineer upon completion of a study action or its equivalent will serve as the means to satisfy this requirement of the Order. Public notices should provide specific information pertaining to paragraphs (a)(1), (2) and (3) of this section, and be disseminated to the general public in the affected area.

(b) *Section 2(a)(3) of Executive Order.* A notice, not to exceed three pages in length, including a location map, should be submitted to State and areawide A-95 Clearinghouse for the geographic area affected, when an action is to be located in the floodplain. Continuation of existing procedures and requirements of § 240.3(q) will comply with the intent of the Order with the exception that future notices to clearinghouses should also include the additional information required in §240.14(a).

(c) *Section 2b of Executive Order.* Requests for new authorizations or appropriations for new construction starts transmitted to the Office of Management and Budget will provide information on whether a proposed action is located in the floodplain. If the action is located in the floodplain the transmittal will include information on whether the action complies with the EO.

(d) *Statement of Findings.* Since Corps actions in the floodplain are subject to NEPA, the Statement of Findings that is required as part of the conclusions in feasibility reports and required for actions pertaining to operations and maintenance will include, in addition to existing requirements, the following:

(1) Reasons why the proposed action must be located in the floodplain.

(2) Facts considered in making the determination to locate in the floodplain, including alternative sites and actions considered.

(3) Statement on whether the proposed action conforms to applicable State of local floodplain protection standards.

(4) Statement on whether the action affects the natural and beneficial values of the floodplain.

(5) Steps taken to design or modify the proposed action to minimize potential harm to or within the floodplain; and

(6) A general listing of involved agencies, groups, and organizations.

(e) *Public involvement.* To insure that adequate information and opportunities are provided early in the decision-making process to allow the public to participate effectively in floodplain management decisions, a public involvement program should: (1) Include as broad an audience as possible; (2) provide continuous interaction and involvement opportunities for the public in the planning and decision-making process; (3) provide information which promotes the fullest understanding of the proposed action; and (4) provide timely opportunities for all segments of the public to affect a proposed action or plan before alter-

native actions have been precluded. The policies and objectives for public involvement contained in § 240.3 (n) and (p) are parallel to the requirements of the Order and should be continued. However, public participation programs will also include early, specific reference to Executive Order 11988 and its objectives.

§ 240.15 Application of EO to civil works program.

The provisions of this regulation are applicable to civil works activities as outlined below.

(a) *Preauthorization studies.* Where a floodplain may be affected, the policy and procedures of this regulation shall be incorporated in the multiobjective planning process (ER 1105-2-200 series of regulations) from the outset, to a scope and level of detail appropriate for preauthorization studies.

(b) *Advanced engineering and design.* Reporting officers should insure that projects in the advanced engineering and design stages comply with the intent and objective of the Executive Order as set forth in this regulation.

(c) *Continuing Authorities Program (ER 1105-2-50).* Where a floodplain may be affected, the policies and procedures of this regulation are applicable to the planning and design of projects under the continuing authorities program. Current studies conducted thereunder shall incorporate the policies and procedures of this regulation early in the multiobjective planning process as required by § 240.3(f).

(d) *Projects under construction.* The minimization, restoration and preservation requirements of the Executive Order shall apply to projects under construction. Construction activities should be performed in a manner that harm to the existing floodplain environment is minimized; environmental values of a floodplain construction site is restored to the extent practicable; and existing and beneficial floodplain values of an undisturbed floodplain construction site are preserved and protected to the extent possible.

(e) *Operation and maintenance activities.* The policies and procedures of this regulation are applicable to operation and maintenance activities of the Corps of Engineers within the base floodplain. District Engineers should insure that future actions at projects operated and maintained by the Corps comply with the policies and procedures set forth in this regulation and 33 CFR 209.145.

(f) *Emergency activities.* Emergency flood-related activities essential to saving lives and protecting property and public health and safety, are exempt from the provisions of the Order. Post flood rehabilitation activities performed under Pub. L. 84-99 by the Corps shall comply with the intent of the Executive Order.

PART 252—[RESERVED]

PART 257—[RESERVED]

PART 263—CONTINUING AUTHORITIES PROGRAMS

Subpart A—General

Sec.

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Subpart B—Navigation Policy

263.21 Small navigation project authority (Section 107).
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Subpart C—Flood Control Policy

263.23 Small flood control project authority (Section 205).
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263.25 Authority for emergency streambank and shoreline protection of public works and nonprofit public services (Section 14).

Subpart D—Shore Protection Policy

Sec.
263.26 Small beach erosion control project authority (Section 103).
263.27 Authority for mitigation of shore damage attributable to navigation works (Section 111).

APPENDIX A—HISTORY OF PROGRAM AND PROJECT LIMITATIONS CONTINUING AUTHORITIES PROGRAM
APPENDIX B—APPLICATION OF MULTIOBJECTIVE PLANNING FRAMEWORK TO CONTINUING AUTHORITIES PROGRAM

AUTHORITY: See § 263.13.

SOURCE: 40 FR 51134, Nov. 3, 1975, unless otherwise noted.

Subpart A—General

§ 263.10 Purpose.

This regulation provides policies and procedures for seven legislative authorities under which the Secretary of the Army, acting through the Chief of Engineers, is authorized to plan, design and construct certain types of water resource improvements without specific Congressional authorization.

§ 263.11 Applicability and effective date.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities. This regulation is effective December 1, 1975, as published in the FEDERAL REGISTER on November 3, 1975 and codified as 33 CFR Part 263. The provisions of this regulation are fully applicable to studies commenced and projects initiated after the effective date. For studies underway on the effective date, reporting and approving officers shall fully consider the requirements of this regulation and shall take those actions as necessary to insure that projects are approved on the basis of criteria established by this regulation.

§ 263.12 References.

(a) ER 11-2-201, Civil Works Activities, Funding, Work Allowances and Transfers.

(b) ER 405-2-680 Local Cooperation Projects.

(c) ER 1105-2-10 Intensive Management.

(d) ER 1105-2-402 Organization and General Content of Feasibility Reports.

(e) ER 1105-2-403 Format and Appearance of Feasibility Reports.

(f) ER 1105-2-502 Public Meetings (33 CFR 209.405).

(g) ER 1105-2-507 Preparation and Coordination of Environmental Statements (33 CFR 209.410).

(h) ER 1105-2-800 Public Involvement: General Policies (33 CFR 380).

(i) ER 1105-2-811 A-95 Clearinghouse Coordination (33 CFR 384).

(j) ER 1110-2-1150 Post-Authorization Studies.

(k) ER 1165-2-18 Reimbursement for Advance Non-Federal Participation in Civil Works Projects.

§ 263.13 Program scope.

The Continuing Authorities Program (hereafter referred to as the "Program"), consists of the following legislative authorities, which are reproduced and accompanied by policy interpretation in Subparts B, C and D of this part.

(a) *Small Flood Control Project Authority.* Section 205, Flood Control Act of 1948, as amended (33 USC 701s).

(b) *Authority for snagging and clearing for flood control.* Section 208, Flood Control Act of 1954, as amended (33 U.S.C. 701g).

(c) *Authority for emergency streambank and shoreline protection of Public Works and nonprofit public services.* Section 14, Flood Control Act of 1946, as amended (33 USC 701r).

(d) *Small navigation project authority.* Section 107, River and Harbor Act of 1960, as amended (33 USC 577).

(e) *Authority for snagging and clearing for navigation.* Section 3, River and Harbor Act of 1945 (33 USC 603a).

(f) *Small beach erosion control project authority.* Section 103, River and Harbor Act of 1962, as amended (33 U.S.C. 426g).

(g) *Authority for mitigation of shore damages attributable to navigation projects.* Section 111, River and Harbor Act of 1968 (33 U.S.C. 426i).

§ 263.14 Program eligibility requirements.

Work funded under this Program must meet the requirements of Feder-

al interest and Corps responsibility set forth in one of the legislative authorities referenced in § 263.13. Any project recommended must be justified under established Federal planning criteria, must be complete in itself and must not obligate the Federal government to future work except for those cases in which maintenance by the Federal government is provided by applicable provisions of general law. Eligibility is not permitted for the following:

(a) *Projects specifically authorized by Congress.* The Program will not be used to implement any portion of a project specifically authorized by Congress, including postauthorization changes to such projects. However, once a project has been completed to the full extent permitted by its Congressional authorization, this Program could be utilized to provide for a new, complete-in-itself improvement which will not impair or substantially change the purposes of the specifically authorized project.

(b) *Existing non-Federal responsibility.* This Program may not be utilized for a project that would in effect nullify or change an existing condition of non-Federal responsibility required for a project specifically authorized by Congress, whether constructed or not. Such changes would require Congressional action.

(c) *Operation and maintenance of non-Federal projects.* This Program may not be used for adoption of a non-Federal project for future maintenance at Federal expense.

§ 263.15 Program policies.

(a) *Designation of authority.* One of the referenced legislative authorities must be designated as the primary purpose of the project for allocation of Program funds and for determining legislative funding limitations. However, other authorized project purposes are not precluded to meet related needs as determined appropriate by the Chief of Engineers. The cost limitation of Corps participation for the designated authority will prevail regardless of the number of project purposes served. Normally, only one authority will be used for each study accomplished and each project recommended. Certain authorizations specify individual project allotment ceilings "from the appropriations for any one fiscal year." It is the intent of Congress that such specified amount be the maximum limit for Corps of Engineers expenditures at each location or individual project undertaken, without regard to time.

(b) *Applicability of costs to Federal and non-Federal shares.* Unless otherwise specified in a legislative authority (§ 263.13), cost sharing policies applicable to Congressionally authorized projects are applicable to projects recommended under this Program. Any legislative limitation on Corps participation in project costs, however, takes precedence over the apportionment of costs resulting from established cost sharing policies.

(1) *Project first costs.* Project first costs include all Corps of Engineers costs for investigations, design, and construction (including costs of supervision and administration) incurred subsequent to the Division Engineer's transmittal of a Detailed Project Report or Recon Report to OCE for approval. These costs are normally those related to preparation of plans and specifications and project construction.

(2) *Federal cost limitation.* All Corps of Engineers costs of investigations, planning, design and construction, to include those incurred prior to transmittal of the DPR or Recon Report to OCE for approval are to be included within the cost limitation established by Congress for a particular Program authority. Expenditures of other Federal agencies under their own authorities are not to be included within this cost limitation.

(3) *Costs for economic analysis.* Costs to be considered as a part of the economic analysis (i.e., determination of a benefit-cost ratio), are the same as those considered in feasibility reports transmitted to Congress for authorization. In this regard, all costs incurred prior to the Division Engineer's transmittal of the Detailed Project or Recon Report to OCE for approval are considered "preauthorization study costs" and are excluded from the economic analysis.

(4) *Use of Federal funds to satisfy local cooperation requirements.* Where

the law requires that lands, easements and rights-of-way be furnished by local interests "without cost to the United States", direct contributions of other Federal agencies may not be accepted by local interests to satisfy such local cooperation requirements once local interests have furnished a letter of intent (see § 263.17(e)(5)) to the reporting officer.

(5) *Non-Federal costs.* Local interests must agree to assume responsibility for designated items of local cooperation and for all project costs in excess of the specified Corps cost limitation, or as otherwise apportioned, to insure that expenditure of Corps funds will result in a project that is integrally complete and fully effective. If the project cost exceeds the Corps cost limit, the difference is provided by local cash contributions. Local participation requirements will not be reduced, offset, or otherwise credited for local expenditures prior to the approval of a project by the Chief of Engineers. The scope of the project may be increased, including the addition of project purposes, if local interests are willing to pay the additional costs.

(c) *The planning process.* Planning will be conducted generally in accordance with the 1105-2-200 series of planning regulations, adapted to this Program, as discussed in paragraphs (c)(1) through (c)(3) of this section and in Appendix B.

(1) *Stage 1—Reconnaissance.* The reporting officer is delegated the authority to conduct a Reconnaissance (Recon) upon the request of a non-Federal governmental entity or official, to determine if a detailed feasibility study is warranted. Charges not to exceed $5,000 may be made against the District revolving fund. The results of the Recon will be reported to the Division Engineer in a brief letter report; the Division Engineer will require of a reporting officer only information considered essential for approval of proceeding with the feasibility study, as provided in paragraph (e)(2) of this section.

(2) *Stage 2—Feasibility study (Plan formulation).* The Division Engineer is delegated the authority to authorize the reporting officer to conduct a feasibility study, subject to availability of funds from OCE.

(i) The criteria for Division Engineer approval for initiating a feasibility study are: there is a Federal interest in the problem identified in the Recon, there exists solutions for which Federal participation may be justified under one of the Program authorities, there are existing non-Federal entities which are legally and financially capable of satisfying the typical local cooperation requirements for such solutions, and a feasibility study can be accomplished at a reasonable cost compared to the prospective benefits from solving the problems identified in the Recon.

(ii) Where a significant question arises concerning the Federal interest in a problem, the applicability of one of the Program authorities, or other policy matters, the case should be referred to DAEN-CWP or DAEN-CWO prior to authorization of a feasibility study.

(iii) The feasibility study should complete the plan formulation process, including the selection of a plan. The study should be terminated if any of the above criteria are not satisfied, if there is a lack of public support, or in the case of obtaining local assurances, that a reasonable length of time (as determined by the reporting officer) has passed without satisfactory assurances from local interests. (See also (§ 263.17(e)(5)).

(3) *Stage 3—Development of Recommended Plan.* This stage corresponds to Phase II AE&D for projects specifically authorized by Congress. Authority to continue the planning process from plan formulation to development of a recommended plan is delegated to the reporting officer, unless otherwise provided by implementing instructions issued by the Division Engineer, in accordance with Division responsibilities for intensive management of the program (§ 263.16(b)).

(d) *Review of planning reports.* The primary responsibility for review of all aspects of Recon reports and DPR's rests with the Division Engineer. Division Engineers (with the exception of New England and Pacific Ocean) are delegated the authority to approve the plan formulation aspects of the study

and the engineering design of recommended plans, in order that the reporting officer may proceed with work on plans and specifications pending formal approval of the project by the Chief of Engineers. Review of DPRs and Recon reports by OCE will be limited to conformance of recommended plans to existing policy.

(e) *Public involvement.* General policy and guidance on public involvement is contained in ER 1105-2-800. Requirements for public meetings are discussed further in § 263.17(e)(1). There is essentially no difference in the Corps' objectives for involving and informing the public for studies and projects in this Program than for projects planned and constructed under specific Congressional authority. Since plans formulated under this Program are usually smaller in scope than those specifically authorized by Congress, planners should be able to more readily identify the affected and interested public early in the planning process and initiate a public involvement program that can be continued through plan implementation.

(f) *State and agency coordination.* Reporting officers should generally follow the same procedures for agency coordination as in the case of a Congressionally authorized study. Coordination with A-95 clearinghouses is discussed in ER 1105-2-811.

(1) *Section 205, 107, 103, 111 and 208 Authorities.* The views of Governors of affected States, or their designated representatives, and regional offices of appropriate Federal agencies must accompany the DPR when submitted to OCE for approval. Division Engineers shall insure that coordination letters are current and have been adequately considered in the plan formulation and review process. Letters obtained by reporting officers from the coordination of draft or final reports are to be considered current only if the dates on such letters are no more than 360 days prior to the date of submittal of the DPR to OCE, and if no significant changes have been made to the DPR which should be reviewed by the originators of such letters. Reporting officers will normally accomplish any required recoordination of reports to meet the above criteria. Division Engineers may elect, however, to obtain the views of States or Federal agencies, as deemed appropriate. The Chief of Engineers will not normally coordinate DPRs with Governors or Federal Department heads.

(2) *Section 14 and 3 Authorities.* The provisions of paragraph (f)(1) of this section shall apply to the extent determined feasible by the Division Engineer. To be responsive to emergency conditions and to avoid undue delays, Division Engineers may permit coordination with States and regional offices of Federal agencies to be effected concurrently with the review of the DPR or Recon report by OCE.

(g) *Project approval.* With the exception of projects requiring the personal attention of the Chief of Engineers, the Director of Civil Works is authorized to approve or disapprove projects under this Program, for the Chief of Engineers. Projects will be approved on the basis of a Detailed Project Report (DPR), except in the case of emergencies under Section 14 or 3 Authorities, for which a Recon report (developed for the recommended work) may be utilized, (see § 263.17(b)(3)). Prior to approving a project for construction, requirements for filing an EIS with CEQ must be satisfied, if an EIS has been prepared (ER 1105-2-507), a letter of intent for local cooperation must be obtained from non-Federal interests in accordance with § 263.17(e)(5), and views received from affected States and regional offices of Federal agencies must be considered.

(h) *Project construction.* Division Engineers may authorize District Engineers to commence work on plans and specifications pending project approval; however, contracts for construction shall not be entered into, nor shall funds be allocated for construction, until the Chief of Engineers has approved the project. Procedures for constructing approved projects, including the preparation of plans and specifications are generally the same as employed for Congressionally authorized projects.

(i) *Hold and save provision.* As provided by Sec. 9, Pub. L. 93-251 (88 Stat. 16), "The requirement * * * that non-Federal interests hold and save

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the United States free from damages due to construction, operation, and maintenance of the project, does not include damages due to the fault or negligence of the United States or its contractors." This provision will be reflected in all "hold and save" requirements of local cooperation.

(j) *Withdrawal of project approval.* The Chief of Engineers may withdraw approval of a project under the Continuing Authorities Program at any time prior to the signing of a written agreement under Section 221, Pub. L. 91-611 (§ 263.17(k)).

(1) Reporting officers shall at least annually review approved projects on which construction has not been initiated and shall determine if such projects should remain on the backlog awaiting construction funds. A recommendation for withdrawal of project approval shall be based on the following criteria:

(i) Local interests are unwilling or unable to provide the necessary local cooperation,

(ii) The project is no longer considered the best solution to the problems of the area, considering economic, social, and environmental factors, or

(iii) The project is no longer justified under applicable Federal planning criteria.

(2) Findings which indicate that the project should remain in the backlog shall not be reported to OCE. Recommendations for withdrawal of project approval shall be transmitted to DAEN-CWP-E, C, or W, or DAEN-CWO, depending on the project authority.

(i) Recommendations shall be coordinated with local, State and Federal interests consistent with Corps public involvement objectives, prior to transmittal to OCE.

(ii) Recommendations shall be accompanied by a brief Project Information Sheet, as required under procedures for recommending project deauthorization under Section 12, Pub. L. 93-251.

(3) Reporting officers shall notify appropriate local, State and Congressional interests of any final action taken by OCE on recommendations for withdrawal of project approval.

(4) As in the case of project approval, withdrawal of approval may be accomplished by the Director of Civil Works, for the Chief of Engineers.

§ 263.16 Program management responsibilities.

(a) *Office, Chief of Engineers.* Two OCE elements will have primary responsibility for program management: DAEN-CWP (Sections 205, 208, 14, 107 and 103 Authorities) and DAEN-CWO (Section 3 and 111 Authorities). These elements are responsible for the staffing of all actions required of OCE by this regulation, maintaining a list of Division and District Program coordinators (as required by paragraphs (b) and (c) of this section), and evaluating the performance of the Program.

(b) *Division Engineers.* Divisions are responsible for intensive management of the Program in accordance with ER 1105-2-10, and are delegated certain approval authorities by the Chief of Engineers, as given in § 263.15 and § 263.17 of this regulation. Division Engineers are responsible for insuring, through intensive management, that studies are initiated and terminated at the appropriate time, and funded at the appropriate level, for efficient use of Program funds. Division Engineers are to specifically designate an individual, or individuals, within the Division office, to manage and coordinate activities under the Continuing Authorities Program.

(c) *District Engineers/Operating Division Engineers.* Reporting officers are to specifically designate individuals to coordinate and manage activities under the Continuing Authorities Program. Reporting officers are responsible for insuring that the Reconnaissance investigations are conducted only to the extent required to achieve the objective established by this regulation.

§ 263.17 Planning, design and construction procedures.

This paragraph prescribes procedures to be followed from the initiation of a Recon to completion of construction of a project. Division Engineers are to establish milestones as deemed appropriate, in accordance

with ER 1105-2-10. Unless otherwise stated, all correspondence with OCE relating to the procedures in this paragraph will be addressed to HQDA (DAEN-CWP-E, C or W) WASH DC 20314 or HQDA (DAEN-CWO) WASH DC 20314, depending on the study authority, as provided for in § 263.16(a).

(a) *Initiation of Reconnaissance.* As outlined in § 263.15(c) Recon stage is designed to provide the Division Engineer with sufficient justification for authorizing a feasibility study. Reporting officers are to notify the Division Engineer and either DAEN-CWP-A or DAEN-CWO by letter when commencing a Recon. Such letter or teletype should give the date the Recon began and an identifying name. Charges may be made against the District revolving fund in amounts not to exceed $5,000. Exceptions to this limitation will require prior approval from DAEN-CWP or DAEN-CWO, depending on the study authority. Requests for such exceptions shall be justified by the reporting officer. The suggested scope of a Recon is more fully discussed in Appendix B. (See also ER 1105-2-811 for A-95 clearinghouse coordination requirements.)

(b) *Approval for initiation of feasibility study.* The Division Engineer is the approving authority for initiation of a feasibility study, and as such, will provide reporting offices with appropriate guidance on submission of a Recon letter report in accordance with the general policy stated in § 263.15(c).

(1) Once the Recon is completed, no further work may be accomplished without a work allowance and allotment from OCE.

(2) The recommendations from a Recon may be released by reporting officers to interested parties after action has been taken by the Division Engineer on the Recon report.

(3) In the case of emergencies under Section 14 or 3 Authorities, the Division Engineer may approve a Recon Report for immediate transmittal to OCE (in five copies) for approval and funding of recommended work. In such cases, the Chief of Engineers may approve exceptions to the requirements stated in paragraphs (e)(2) through (e)(5) of this section, as deemed advisable in the public interest.

(4) Except as provided in paragraph (b)(3) of this section, or when the Division Engineer desires OCE views, Recon reports will be transmitted to OCE for information only (in two copies).

(c) *Request for funding of feasibility study.* Reporting officers will request funding of an approved feasibility study, through Division Engineers, to DAEN-CWP-E, C or W or from DAEN-CWO in accordance with § 263.16(a). Requests will include the total estimated funding requirement by fiscal year for the feasibility study (including expenditures previously incurred in the Reconstage), consistent with the capability of the District to conduct the study. Requests for reimbursement for Recon expenditures when a feasibility study has not been approved will be made in a similar manner.

(d) *Issuance of work allowance.* Work allowances will be issued by DAEN-CWP or DAEN-CWO, as appropriate, based on available funds. Work on a feasibility study will not proceed until such work allowance has been issued. (See also Part 384 of this chapter for A-95 clearinghouse coordination requirements.)

(e) *Completion of feasibility study.* Studies will be conducted in accordance with the policies given in § 263.15 and the planning process discussed in Appendix B. Division Engineers may request guidance from OCE, or schedule a Plan Formulation Review Conference with OCE, as they deem appropriate.

(1) *Public meetings.* Public meetings are not to be considered the only technique for informing the public of the results of feasibility studies or for soliciting input from the public. However, as a matter of policy, at least one public meeting is to be held during the feasibility study, as discussed in § 209.405 of this chapter. In certain instances, the reporting officer may feel that the Corps' objectives on public involvement have been achieved without holding a public meeting. Omission of the minimum requirement of one public meeting is to be an exception to

policy and will require prior approval from the Division Engineer.

(2) *Application of Federal planning criteria.* In general, all Federal planning criteria applicable to studies specifically authorized by Congress are also applicable to studies conducted under this Program. Particular attention shall be given to the consideration of nonstructural solutions, consideration of a "no development" plan, and the assessment of impacts of alternative plans. Plans are to be formulated to provide the same independent and complete-within-itself project as recommended under regular authorization procedures.

(3) *Environmental Impact Statement (EIS) requirements.* Requirements for preparation, coordination and submittal of the EIS are contained in ER 1105-2-507. Studies conducted under Section 14 and 3 Authorities may not require an EIS, as provided in § 209.410(h) of this chapter.

(4) *Cultural resources survey.* A cultural resources survey shall be accomplished for the consideration of historic and cultural resources as part of the preparation of the DPR.

(5) *Assurances of local cooperation.* In addition to involvement of local interests throughout the planning process, a letter of intent shall be requested for specific items of local cooperation near the completion of Stage 2 planning (§ 263.15(c)(2)). The letter of intent must be received from the non-Federal entities which will be ultimately signing a Section 221 agreement (paragraph (k) of this section), and will be transmitted with the DPR, or Recon report in the case of emergencies under Section 14 or 3 Authorities, together with an analysis of the reporting officer to demonstrate that such non-Federal entities are legally constituted, and have sufficient financial capabilities to satisfy all requirements of local cooperation.

(i) The reporting officer shall review draft local cooperation and repayment agreements with affected non-Federal interests, advising them of currently estimated costs, anticipated timing of costs, all typical provisions of the agreement or contract, and the timing of process of entering into a final, signed agreement or contract.

(ii) The letter of intent shall include verbatim all local cooperation requirements set forth in the Detailed Project Report, or the Recon report, if utilized for project approval; shall state that a review has been made of draft agreements or contracts; shall indicate an understanding of when final project costs are to be determined by the reporting officer; and shall include the following statement:

In carrying out the specified non-Federal responsibilities for the (*identification of work or project*), (*appropriate entity*) agrees to comply with the provisions of the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970", Pub. L. 91-646, approved 2 January 1971; and Section 221, Pub. L. 91-611, approved 31 December 1970, as amended.

(iii) The letter of intent shall be signed or cosigned by the chief legal officer of the political subdivision furnishing the letter to the reporting officer. When a State or a department thereof is to be the sponsor, the Attorney General of that State is the approving authority.

(f) *Submittal of Termination Letters or DPR to OCE.* (1) If a feasibility study is terminated prior to the completion of a DPR, the Division Engineer will notify by letter DAEN-CWP-E, C or W or DAEN-CWO-M, depending on the study authority; such notification is to include reasons for termination, an accounting of expenditure of study funds, and the amount of funds to be returned to OCE. Release of unobligated funds will be effected as soon as possible. Revocation of funds by OCE officially terminates the study. The reporting officer shall notify Congressional delegations and local interests when the study has been officially terminated.

(2) If the feasibility study results in a DPR, ten (10) copies of the report, and related documentation required by § 263.15(e), will be transmitted with recommendations of the Division, Engineer to DAEN-CWP or DAEN-CWO, depending on the study authority (reference § 263.16(a)). Exceptions to the requirements of paragraph (e) of this

section should be noted in the letter of transmittal. In the review of a DPR, Division Engineers may refer any major disagreements with reporting officers on planning matters to DAEN-CWP-E, C or W, or on technical engineering matters to DAFN-CWE-B, for resolution prior to release of public notice and submittal of the final report to OCE.

(3) Upon submittal of a Detailed Project Report to OCE, the District Engineer shall release a public notice informing the public of the proposed action. This requirement may be accomplished by the Division Engineer, at his discretion. The notice need not invite comments but will include the address of the District and Division Engineer in the event that interested parties desire to request further information or comment on the recommendations. Public notices are not required when a feasibility study is terminated without submittal of a DPR (paragraph (f)(1) of this section), or when a Recon report is submitted to OCE for project approval (paragraph (b)(3) of this section).

(g) *Work on plans and specifications.* Division Engineers are delegated the authority to allow District Engineers to commence work on plans and specifications pending approval of a project by the Chief of Engineers, provided a satisfactory letter of intent (§ 263.17(e)(5)) has been received from local interests. Such work may be stopped, however, if review of the DPR by OCE reveals a policy problem affecting the project or the report recommendations. Work on plans and specifications should utilize all remaining funds from allocations for the feasibility study. Additional funds may be requested by separate letter, or included with the Division Engineer's favorable indorsement of a DPR.

(h) *OCE review and approval of DPR or Recon Report.* As indicated in paragraph 7a, designated OCE elements are responsible for review, staffing and coordination of the DPR, or Recon report when transmitted to OCE for approval. Maximum reliance will be placed on the review conducted by the Division Engineer. Comments will be solicited from DAEN-CWP, DAEN-CWR, and DAEN-GCC, only as required for approval of the recommended project. In all cases, a copy of the DPR will be forwarded to DAEN-CWE-B for information, and to DAEN-REA-P for review of local cooperation requirements, upon receipt from the Division Engineer. Review of DPR's by the BERH staff may be requested at the discretion of DAEN-CWP. In such instances, the Resident Member, BERH, will be requested to submit comments on the DPR to DAEN-CWP. Project approval normally will be accomplished by the Director of Civil Works, for the Chief of Engineers, in accordance with § 263.15(g).

(i) *Notification of interested parties of action by the Chief of Engineers.* Reporting officers are responsible for notification of all interested parties, including Congressional Delegations, States and local interests, of action taken by the Chief of Engineers on DPR's. Division Engineers may prescribe procedures for such notification as deemed necessary.

(j) *Request for construction funds.* Following receipt of DPR approval from OCE, reporting officers may submit a request for construction funds to DAEN-CWP or DAEN-CWO, depending on the Program authority, including an updated schedule of funding requirements by fiscal year based on an estimated date by which plans and specifications for the first construction contract will be completed. (See also § 263.20(a) concerning inclusion of these requests in budget submissions.)

(k) *Approval of Local Cooperation Agreement.* Prior to issuance of a work allowance by OCE for construction funds, a signed written agreement for local cooperation must be obtained and approved by the Secretary of the Army, or his designated representative, in accordance with ER 405-2-680. The signed agreement shall be transmitted to DAEN-REA-P together with a copy of the DPR or Recon report which approved the project or work.

(l) As required by ER 405-2-680, requirements of local cooperation are to be stated in the agreement verbatim from the approved project document. Any deviation shall be submitted to DAEN-CWP for approval by the Director of Civil Works, for the Chief of

Engineers, prior to the reporting officer obtaining signatures on the agreement.

(2) After OCE approval of the agreement, a work allowance will be issued by DAEN-CWP or DAEN-CWO depending on the Program authority, based on availability of funds.

(l) *Completion of Project Construction (RCS DAEN-CWB-16).* Policies and procedures for projects constructed under specific Congressional authority, with the exception of budgetary submissions and funding matters, are applicable to projects constructed under this Program. At the completion of project construction, reporting officers shall:

(1) Notify DAEN-CWO and DAEN-CWP-A by letter, including a brief description of the completed project, the estimated requirements for operation and maintenance (Federal and non-Federal), the final Federal and non-Federal project costs, and the date on which the project was considered operational.

(2) Notify local interests that project construction has been completed and inform them of their operation and maintenance responsibilities and the operational characteristics of the project.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

§ 263.18 Program completion-time objectives.

To provide a Program responsive to local needs, the following target (maximum) completion time objectives are established and should be used to the extent feasible, in scheduling work and programming funds. Shortening of these objectives is encouraged for specific studies and projects when appropriate. However, high standards of planning, design and construction are not to be sacrificed. Attainment of completion-time objectives through intensive management is to be a major concern for those elements and individuals given Program management responsibilities in § 263.16 of this regulation.

PROGRAM AUTHORITIES, COMPLETION TIMES IN MONTHS

	205, 107, 103, and 111	208 and 14	Emergency 14 and 3[1]
(a) Completion of recon and submission of funding request or negative report to OCE	2	1	2
(b) Completion of feasibility study by reporting officer and preparation of DPR	16	9	(2)
(c) Review of DPR or recon report by division engineer, (including provisions of § 263.15(f))	2	1	.5
(d) Review of DPR or rec[illegible] report by OCE	2	1	.5
(e) Completion of project [illegible]nstruction (including plans and specifications), after project approval	18	12	3
(f) Total completio[illegible]me objective	40	24	6

[1]The decision to utilize a recon report or DPR for recommending a project under sec. 14 authority is delegated to the division engineer (§ 263.17(b)(3)).
[2]Not applicable.

§ 263.19 Detailed project reports.

(a) The Detailed Project Report serves a dual purpose: the report serves both as basis for approval of a project for construction by the Chief of Engineers and it serves as a basis for preparation of plans and specifications. (See exception for emergencies, § 263.17(b)(3)). The main report should reflect the plan formulation, generally in accordance with ER 1105-2-402 and ER 1105-2-403. A Design Appendix will be provided as appropriate, for more detailed information on the development of the plan, or elements of the selected plan, recommended for implementation as a Federal project by the Corps of Engineers. The Design Appendix of the report will generally meet the requirements of ER 1110-2-1150, as it pertains to Phase II AE&D studies for projects specifically authorized by Congress, except that it need not duplicate material on plan formulation covered in

the main report. Other appendixes should be included as required.

(b) It is anticipated that DPR's submitted for projects under Section 208 Authority will be less extensive than reports submitted under Sections 205, 107, 103 and 111 Authorities, and that DPR's submitted for projects under Section 14 Authority will be further abbreviated due to simplicity of the project. The important point is that the planning process should be generally considered the same for studies conducted under all Program authorities; the plan formulation portion of the DPR should reflect this process and the rationale for arriving at the selected plan and recommendations for Federal participation.

(c) The level of detail and extent of engineering work reflected in the Design Appendix must be sufficient to proceed directly to plans and specifications. In the event that the need arises for feature design memoranda on selected aspects of the project, such requirements should be identified in the letter of transmittal accompanying the DPR when submitted to OCE.

§ 263.20 Program funding.

(a) *Program budget.* Initial consideration of estimated project construction requirements (including funds for plans and specifications), should be given in the first Program budget submission following completion of Stage 2 planning (§ 263.15(c)(2)). OCE elements designated in § 263.16(a) are responsible for issuing Program budget guidance to field operating agencies, formulating appropriate program budgets from field submissions, and submitting such budgets to DAEN-CWB.

To expedite budget preparation, field operating agencies should insure that budgetary data on the Continuing Authorities Program are sent directly to DAEN-CWP-A or DAEN-CWO, depending on the authority.

(b) *Use of Program funds.* Funds appropriated by Congress under the legislative authorities of this Program will be utilized by the Corps of Engineers in conducting studies approved by Division Engineers, and in constructing projects approved by the Chief of Engineers. This does not preclude the use of private architect-engineer firms or other consultant services in Program implementation. No grants of Program funds will be made to local interests for conducting studies or constructing projects, nor shall contributions be made for features or benefits of projects constructed by another agency or by local interests. Reimbursement to local interests for work undertaken by them on an approved project normally will not be authorized; however, if the situation warrants consideration of such a provision, the procedures contained in ER 1165-2-18 may be followed to request OCE approval in advance of such action by local interests.

(c) *Requests for funds.* Procedures for requesting Program funds are contained in § 263.17. Generally, requests will be made in four instances: After approval by Division Engineer to proceed with a feasibility study, after submission of a DPR to OCE and approval of the Division Engineer to proceed with plans and specifications, after OCE approval of a DPR for proceeding with project construction, and in other cases as required to revise the preceding requests. In the case of requesting funds for plans and specifications and project construction, deviations from amounts estimated in previous budget submissions, or contained in current approved Program budgets, will be briefly explained.

(d) *Retention, revocation and transfer of funds.* Unobligated funds will be reported to DAEN-CWP-A or DAEN-CWO, depending on the study authority under which the funds were allotted, as soon as final costs for studies or construction are determined. When work on a study, plans and specifications, or project construction must be suspended for an unknown period of time, or suspended for an extended period, the above OCE elements are to be notified immediately by letter with the Division Engineer's recommendation regarding retention or revocation of unobligated funds held in that particular account. The authority for transfers and reporting requirements are contained in ER 11-2-201.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

Subpart B—Navigation Policy

§ 263.21 Small navigation project authority.

(a) *Legislative authority.* Section 107 of the River and Harbor Act of 1960, as amended by Section 310 of the River and Harbor Act of 1965, section 112 of the River and Harbor Act of 1970, and section 133(a) of the Water Resources Development Act, approved 22 October 1976, states:

(a) The Secretary of the Army is authorized to allot from any appropriations hereafter made for rivers and harbors not to exceed $25,000,000 for any one fiscal year for the construction of small river and harbor improvement projects not specifically authorized by Congress which will result in substantial benefits to navigation and which can be operated consistently with appropriate and economic use of the waters of the Nation for other purposes, when in the opinion of the Chief of Engineers such work is advisable, if benefits are in excess of the costs.

(b) Not more than $2,000,000 shall be allotted for the construction of a project under this section at any single locality and the amount allotted shall be sufficient to complete the Federal participation in the project under this section.

(c) Local interests shall provide without cost to the United States all necessary lands, easements and rights-of-way for all projects to be constructed under the authority of this section. In addition, local interests may be required to hold and save the United States free from damages that may result from the construction and maintenance of the project, and may be required to provide such additional local cooperation as the Chief of Engineers deems appropriate. A State, county, municipality or other responsible local entity shall give assurance satisfactory to the Chief of Engineers that such conditions of cooperation as are required will be accomplished.

(d) Non-Federal interests may be required to share in the cost of the project to the extent that the Chief of Engineers deems that such cost should not be borne by the Federal Government in view of the recreational or otherwise special or local nature of the project benefits.

(e) Each project for which money is allotted under this section shall be complete in itself and not commit the United States to any additional improvement to insure its successful operation other than routine maintenance, and except as may result from the normal procedure apply to projects authorized after submission of survey reports and projects constructed under the authority of this section shall be considered as authorized projects.

(f) This section shall apply to, but not be limited to, the provision of low water access navigation channels from the existing channel of the Mississippi River to harbor areas heretofore or now established and located along the Mississippi River.

(b) *Operation and maintenance responsibility.* Projects for navigation constructed under the authority of Section 107 will be considered the same as authorized projects and are operated and maintained by the Corps of Engineers at Federal cost under the same procedures and policies as applied to projects specifically authorized by Congress. (Reference section 6, Pub. L. 93-251).

(c) *Aids to navigation.* Planning and design of channel and other navigation improvements should give full consideration to the feasibility and costs of establishment by the Coast Guard of suitable aids to navigation. The costs for navigation aids to be provided by the Corps of Engineers, Coast Guard, State, and local interests, and similar project-associated costs, will be included in the economic analysis. Project associated expenditures by the Corps of Engineers for aids to navigation are included within the cost limitation under the Section 107 authority, but expenditures by the U.S. Coast Guard are not. The report appendix should reproduce the letter from the Coast Guard stating the estimated number, type and cost of navigation aids and their maintenance cost.

(d) *Local cooperation.* Local cooperation requirements for projects under the Sec. 107 authority are those normally recommended for similar work authorized by Congress.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

§ 263.22 Authority for snagging and clearing for navigation (Section 3).

(a) *Legislative authority.* Section 3 of the River and Harbor Act approved 2 March 1945, states:

The Secretary of the Army is hereby authorized to allot not to exceed $300,000 from any appropriations made prior to or after March 2, 1945, for any one fiscal year for improvement of rivers and harbors, for

removing accumulated snags and other debris, and for protection, clearing and straightening channels in navigable harbors and navigable streams and tributaries thereof, when in the opinion of the Chief of Engineers such work is advisable in the interest of navigation or flood control.

(b) *Policy*—(1) *eligible work.* It is the policy of the Chief of Engineers to utilize this authority primarily for emergency work to benefit navigation. Work pursuant to this authority is undertaken as an emergency measure to clear or remove unreasonable obstructions to navigation in navigable portions of rivers, harbors and other waterways of the United States, or tributaries thereof, in order to provide existing traffic with immediate and significant benefit. When recurring maintenance work will be required to secure enduring benefits from the initial work, local interests should be informed that they will have to bear the costs of such recurring maintenance until such time as maintenance at that location may become part of a project specifically authorized by Congress and subsequently funded.

(2) *Ineligible work.* In addition to the ineligible work listed in para 5 of the basic regulation, the following work is also ineligible under this authority:

(i) *Normal shoaling process.* When the condition for which the remedial work is requested resulted from the normal shoaling process associated with that particular reach of waterway and not from a sudden occurrence.

(ii) *Work within the limits of authorized projects.* This restriction applies where authorized new work remains to be accomplished unless an emergency results from aggravated conditions arising subsequent to the authorization of the project. In that event, corrective measures will be limited to restoration of conditions existing at the time of such authorization.

(iii) *General widening or deepening.* No general widening or deepening will be accomplished to meet the desires of navigation interests to use larger vessels.

(c) *Local cooperation.* Local cooperation requirements for projects under the Section 3 authority are those normally recommended for similar work authorized by Congress.

Subpart C—Flood Control Policy

§ 263.23 Small flood control project authority (Section 205).

(a) *Legislative authority.* Section 205 of the Flood Control Act approved 30 June 1948, as amended by section 205 of the Flood Control Act approved 23 October 1962, section 61 of the Water Resources Development Act approved 7 March 1974, and section 133(b) of the Water Resources Development Act approved 22 October 1976, states:

> The Secretary of the Army is authorized to allot from any appropriations heretofore or hereafter made for flood control, not to exceed $30,000,000 for any one fiscal year, for the construction of small projects for flood control and related purposes not specifically authorized by Congress, which come within the provisions of Section 1 of the Flood Control Act of June 22, 1936, when in the opinion of the Chief of Engineers such work is advisable. The amount allotted for a project shall be sufficient to complete Federal participation in the project. Not more than $2,000,000 shall be allotted under this section for a project at any single locality, except that not more than $3,000,000 shall be allotted under this section for a project at a single locality if such project protects an area which has been declared to be a major disaster area pursuant to the Disaster Relief Act of 1966 or the Disaster Relief Act of 1970 in the five-year period immediately preceding the date the Chief of Engineers deems such work advisable. The provisions of local cooperation specified in Section 3 of the Flood Control Act of June 22, 1936, as amended, shall apply. The work shall be complete in itself and not commit the United States to any additional improvement to insure its successful operation, except as may result from the normal procedure applying to projects authorized after submission of preliminary examination and survey reports.

(b) *Non-Federal responsibilities for dam and reservoir project.* All new projects under this authority, including dams and reservoirs, are considered local protection projects. Non-Federal responsibilities for such dams and reservoirs will thus include the usual lands, easements, right-of-way, and other requirements of local protection projects. Similarly, non-Federal interests must operate the flood

control features of any dam or reservoir in accordance with regulations prescribed under the authority contained in section 7 of the Flood Control Act of December 1944.

(c) *Major disaster area.* Determination of a "major disaster area" can be made only by the President, pursuant to the Disaster Relief Acts cited above.

(d) *Local cooperation.* As stated in para 1a of this part, the provisions of section 3, Flood Control Act of 1936, as amended (33 U.S.C. 701c), are applicable. Other requirements shall be recommended by reporting officers to insure the long-term viability of the plan and the attainment of benefits from the plan. Consideration of land enhancement shall be in accordance with EM 1120-2-109.

(e) *Limitation on erosion protection.* This authority shall not be used for protecting against bank erosion. However, bank stabilization may be included as an integral part of a plan for preventing flood damage.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

§ 263.24 Authority for snagging and clearing for flood control (Section 208).

(a) *Legislative authority.* Section 208 of the Flood Control Act approved 3 September 1954 and as further amended by Section 26 of the Water Resources Development Act approved March 7, 1974 states:

> The Secretary of the Army is authorized to allot not to exceed $5,000,000 from any appropriations heretofore or hereafter made for any one fiscal year for flood control, for removing accumulated snags and other debris, and clearing and straightening of the channels in navigable streams and tributaries thereof, when in the opinion of the Chief of Engineers such work is advisable in the interest of flood control: *Provided*, That not more than $250,000 shall be expended for this purpose for any single tributary from the appropriations for any one fiscal year.

(b) *Policy.* Work under this authority is limited to clearing and snagging or channel excavation and improvement with limited embankment construction by use of materials from the channel excavation. If investigation indicates that placement of revetment is needed to provide a complete and fully effective project, the local interests should provide for the item of construction either by work or by cash contribution.

(c) *Local cooperation.* The provisions of § 263.23(d) are applicable.

§ 263.25 Authority for emergency streambank and shoreline protection of public works and nonprofit public services (Section 14).

(a) *Legislative authority.* Section 14 of the Flood Control Act approved July 24, 1946, as amended by section 27 of the Water Resources Development Act approved March 7, 1974, states:

> The Secretary of the Army is authorized to allot from any appropriations heretofore or hereinafter made for flood control, not to exceed $10,000,000 per year, for the construction, repair, restoration, and modification of emergency streambank and shoreline protection works to prevent damage to highways, bridge approaches, public works, churches, hospitals, schools, and other nonprofit public services, when in the opinion of the Chief of Engineers such work is advisable: *Provided*, That not more than $250,000 shall be allotted for this purpose at any single locality from the appropriations for any one fiscal year.

(b) *Policy.* Work under the Section 14 authority shall serve to prevent flood or erosion damages to endangered highways, highway bridge approaches, public works, and nonprofit public facilities by the construction or repair of emergency streambank and shoreline protection works. Eligible highways consist of major highway systems of national importance, and principal highways, streets, and roads of importance to the local community, such as arterial streets, important access routes to other communities and adjacent settlements, and roads designated as primary farm-to-market roads.

(1) Work under this authority is not limited in engineering scope but the design must be an integrally complete within itself project that does not require additional work for effective and successful operation. The cost limitation on Federal participation may require that local interests supplement the Federal funds, so that combined

Federal and local efforts will produce a complete, useful improvement.

(2) Reporting officers must be satisfied that the protection of eligible public works and non-profit public services are justified on the basis of the National Economic Development and Environmental Quality objectives.

(c) *Legislative interpretations.* (1) "Public Works" are considered to be those important and essential public facilities which serve the general public and are owned and operated by the Federal, State, or local governments, such as municipal water supply systems and sewage disposal plants.

(2) "Churches, hospitals, schools" includes churches, and public and private non-profit hospitals and schools.

(3) "Non-profit public services" are considered to be facilities or structures which serve the general public and are not intended to earn a profit. Although they may be publicly used, privately owned, profit-making facilities located along streambanks or shore lines are not eligible for protection.

(4) "Shoreline" includes, but is not limited to, oceans, gulfs, and the Great Lakes.

(d) *Local cooperation.* The provisions of § 263.23(d) are applicable.

Subpart D—Shore Protection Policy

§ 263.26 Small beach erosion control project authority (Section 103).

(a) *Legislative authority.* Section 103(a) of the River and Harbor Act of 1962, as amended by section 310 of the River and Harbor Act of 1965 and by section 112 of the River and Harbor Act of 1970, amends Section 3 of Pub. L. 826, 84th Congress to read as follows:

The Secretary of the Army is authorized to undertake construction of small shore and beach restoration and protection projects not specifically authorized by Congress, which otherwise comply with Section 1 of this Act, when he finds that such work is advisable, and he is further authorized to allot from any appropriations hereafter made for civil works, not to exceed $25,000,000 for any one fiscal year for the Federal share of the costs of construction of such projects: *Provided,* That not more than $1,000,000 shall be allotted for this purpose for any single project and the total amount allotted shall be sufficient to complete the Federal participation in the project under this section including periodic nourishment as provided for under section 1(c) of this Act: *Provided further,* That the work shall be complete in itself and shall not commit the United States to any additional improvements to insure its successful operation, except for participation in periodic beach nourishment in accordance with section 1(c) of this Act, and, as may result from the normal procedure applying to projects authorized after submission of survey reports.

(b) *Periodic nourishment.* When it can be demonstrated as being part of the best plan to meet project objectives and a more economical remedial measure than others, provision for periodic nourishment may be recommended. The recommended Federal participation in periodic nourishment will be limited to a specific period of time. The total project costs shall include both initial construction and periodic nourishment.

(c) *Local cooperation.* The provisions of ER 1120-2-110 and ER 1165-2-19 are applicable.

§ 263.27 Authority for mitigation of shore damage attributable to navigation works (Section 111).

(a) *Legislative authority.* Section 111 of the River and Harbor Act of 1968 (Pub. L. 90-483, approved August 13, 1968) states:

The Secretary of the Army, acting through the Chief of Engineers is authorized to investigate, study, and construct projects for the prevention or mitigation of shore damages attributable to Federal navigation works. The cost of installing, operation and maintaining shall be borne entirely by the United States. No such projects shall be constructed without specific authorization by Congress if the estimated first cost exceeds $1,000,000.

(b) *Definitions*—(1) *Federal navigation works* is defined as a project or feature thereof that has been specifically authorized by the Congress in a River and Harbor Act or authorized under the continuing authorities granted by Section 201 or the Flood Control Act of 1965, or by Section 107 of the River and Harbor Act of 1960, as amended. These shall include projects or project features built by others but which have been adopted as a Federal Navigation project.

(2) *Beach erosion control project* is defined as a project that has been specifically authorized by the Congress in a River and Harbor Act or authorized under the continuing authorities granted by Section 201 of the Flood Control Act of 1965 or by Section 103 of the River and Harbor Act of 1962. This is considered to include the beach erosion control portion of combined beach erosion and hurricane protection projects.

(3) *Mitigation of shore damages* is defined as the construction of works or procedures to reduce erosion-type damages by shoreline stabilization. The degree of mitigation is the reduction of erosion or accretion to the level which would be obtained without the influence of navigation works at the time navigation works were accepted as a Federal responsibility. It is not intended that shorelines be restored to historic dimensions, but only to lessen the damages by an action that can be justified, the entire costs of which are Federal regardless of shore ownership.

(c) *General policies.* (1) This Act authorizes the study, construction and maintenance of work for prevention or mitigation of damages to both public and privately owned shores to the extent of the damages that can be directly identified and attributed to Federal navigation work located along the coastal and Great Lakes shorelines of the United States. This authority will not be used:

(i) For construction of works for prevention or mitigation of shore damages such as those caused by river bank erosion or vessel generated wave wash.

(ii) To modify navigation projects authorized, but not constructed, that contain features for prevention or mitigation of shore damages or to change the responsibility for maintenance or to modify portions of constructed navigation projects that contain features for prevention or mitigation of shore damages.

(iii) For prevention or mitigation of shore damages caused by non-Federal navigation projects.

(iv) To construct, maintain, modify or change the cost sharing of authorized beach erosion or combined beach erosion and hurricane protection projects, or portions thereof, located adjacent to Federal navigation projects. Except, when it is determined that shore damage to a portion of an authorized beach erosion project is attributable to the navigation project, mitigation measures may be accomplished under this authority, only to the extent of damages that can be directly identified and attributed to the navigation project.

(2) Where the erosion attributable to the Federal navigation project consists of only a portion of the total erosion problem in a specific area and cannot be considered as a separable reach for effective mitigation measures then a Section 111 project cannot be considered for authorization unless,

(i) There is an authorized beach erosion control or combined beach and hurricane protection project for the area with which the Section 111 mitigation measures could be combined to become effective, or

(ii) A general study of the entire problem area is made and leads to the development of an authorized beach erosion control project, (specific authority must be obtained to conduct a general study of the entire problem area) or

(iii) Local interests indicate a willingness to have the erosion problem outside the scope of Section 111 remedied at local cost.

(d) *Cost limitations.* Section 111 provides that the Chief of Engineers has authority to authorize projects for which the estimated first costs will not exceed $1,000,000. The first costs will be the cost of the initial preventive or mitigative measures only. The limitation on costs does not include the cost of project maintenance. The project must be planned as a complete unit and not broken into reaches or stages for cost limitation purposes.

(e) *Reports.* The Recon Report required by § 263.15(c)(1) will:

(1) Determine whether or not Federal navigation works are responsible for causing or contributing to the erosion problem.

(2) Determine the extent of the area affected by the navigation works.

(3) Determine total area experiencing significant erosion.

(4) Determine the approximate percentage of the total erosion problem in a specific area that is attributable to the navigation works.

(5) Recommend whether further study of the specific area affected by the Federal navigation works is justified and whether study of the entire area is desirable.

(f) *Evaluation of mitigation measures.* The objective of Section 111 is to provide mitigation measures for shore damages attributable to Federal navigation projects, when equitable and in the public interest. All practicable alternatives, structural and non-structural should be identified and considered. Work recommended for construction should provide the most practicable and economical means of mitigating existing damages or the prevention of subsequent damages. Justification of mitigation measures should be made by comparing their costs with the values represented by the damages preventable. Any intangible values should be described and given due weight along with the tangible values in this justification. Exercise of the authority of Section 111 to provide mitigation measures at Federal expense is not mandatory. A finding for or against its use should fully consider the pre-project conditions and the justification of incurring mitigation costs.

(g) *Criteria for a Favorable Recommendation.* A recommendation favorable to adoption and construction of work to prevent or mitigate shore damage attributable to a Federal navigation project under the authority of Section 111 of the River and Harbor Act of 1968 may be considered warranted when both of the following conditions exist:

(1) The navigation project has been determined to be the cause of the damage.

(2) Analysis based on sound engineering and economic principles clearly demonstrates the feasibility of the proposed work.

(h) *Cost sharing*—(1) *Construction.* (i) If the work recommended in the report is confined to mitigation work only under Section 111, i.e., erosion totally attributable to the navigation works, costs will be 100 percent Federal.

(ii) If the work recommended is a combination of mitigation under Section 111 and restoration of beaches eroded due to other causes and there is no authorized beach erosion project, mitigation work under Section 111 will be 100 percent Federal and the remaining work will be 100 percent local.

(iii) If the work recommended in the report is a combination of mitigation under Section 111 and the restoration of beaches under an authorized beach erosion project or combination beach erosion-hurricane protection project, the mitigation work under Section 111 will be 100 percent Federal and the remainder in accordance with the cost sharing procedures as specified in project authorization documents.

(2) *Maintenance.* (i) If the initial work is confined to mitigation under Section 111, all maintenance costs are 100 percent Federal.

(ii) If the work is a combination of mitigation under Section 111 and restoration of beaches eroded due to other causes, and there is no authorized beach erosion project, maintenance costs will be shared in the same proportion as recommended for initial construction, i.e., the Section 111 portion will be 100 percent Federal and remaining work 100 percent local.

(iii) If the work is a combination of mitigation under Section 111 and an authorized beach erosion control project or combination beach erosion-hurricane protection project, the Federal maintenance cost for the mitigation work under Section 111 will be in the same proportion as the damage attributed to the Federal navigation work is to the total damage. For the remaining work the cost sharing procedures of the authorized beach erosion or combined beach erosion-hurricane protection project will apply.

(i) *Local cooperation.* (1) The law as written provided that the cost of installing, operating and maintaining projects under this authority shall be borne entirely by the United States; therefore there are no requirements for local cooperation. The cost of any lands, easements or rights-of-way required for construction or subsequent maintenance will be borne entirely by the United States.

(2) Where Section 111 projects are to be accomplished in conjunction with other works (§ 263.15(a)(2)) local interests will be required to furnish assurance of local cooperation similar to those required for regularly authorized projects for their assigned portion of the work.

(3) Where Section 111 projects are to be accomplished in conjunction with authorized projects, the requirements of local cooperation specified in the authorizing document or report will apply.

APPENDIX A—HISTORY OF PROGRAM AND PROJECT LIMITATIONS CONTINUING AUTHORITIES PROGRAM

Section/law	Date	Public law No.	Federal cost limitation per project	Annual program limit
		(1) Small Flood Control Project Authority (Sec. 205)		
Sec. 205 of 1948 FCA	June 30, 1948	80-858	$100,000	$2,000,000
Sec. 212 of 1950 FCA	May 17, 1950	81-516	150,000	3,000,000
Public law 685/84th Congress, 2d Sess	July 11, 1956	84-685	400,000	10,000,000
Sec. 205 of 1962 FCA	Oct. 23, 1962	87-874	1,000,000	25,000,000
Sec. 61 of WRDA of 1974	Mar. 7, 1974	93-251	[1]1,000,000 [2]2,000,000	30,000,000
Sec. 133(6) WRDA of 1976	Oct. 22, 1976	94-587	2,000,000 [3]3,000,000	30,000,000
		(2) Authority for Snagging and Clearing for Flood Control (Sec. 208)		
Sec. 2 of 1937 FCA	Aug. 28, 1937	75-406	$25,000	$300,000
Sec. 13 of 1946 FCA	July 24, 1946	79-526	50,000	1,000,000
Sec. 208 of 1954 FCA	Sept. 3, 1954	83-780	100,000	2,000,000
Sec. 26 of WRDA of 1974	Mar. 7, 1974	93-251	250,000	5,000,000
		(3) Authority for Emergency Streambank and Shoreline Protection of Public Works and Nonprofit Public Services (Sec. 14)		
Sec. 14 of 1946 FCA	July 24, 1946	79-526	$50,000	$1,000,000
Sec. 27 of WRDA of 1974	Mar. 7, 1974	93-251	250,000	10,000,000
		(4) Small Navigation Project Authority (Sec. 107)		
Sec. 107 of 1960 R. & H. Act	July 14, 1960	86-645	$200,000	$2,000,000
Sec. 310 of 1965 R. & H. Act	Oct. 27, 1965	89-298	500,000	10,000,000
Sec. 112 of 1970 R. & H. Act	Dec. 31, 1970	91-611	1,000,000	25,000,000
Sec. 133(a) of WRDA of 1976	Oct. 22, 1976	94-587	2,000,000	25,000,000
		(5) Authority for Snagging and Clearing for Navigation (Sec. 3)		
Sec. 3 of 1945 R. & H. Act	Mar. 2, 1945	79-14	None	$300,000
		(6) Small Beach Erosion Control Project Authority (Sec. 103)		
Sec. 103 of 1962 R. & H. Act	Oct. 23, 1962	87-874	$400,000	$3,000,000
Sec. 310 of 1965 R. & H. Act	Oct. 27, 1965	89-298	500,000	10,000,000
Sec. 112 of 1970 R. & H. Act	Dec. 31, 1970	91-611	1,000,000	25,000,000
		(7) Authority for Mitigation of Shore Damages Attributable to Navigation Projects (Sec. 111)		
Sec. 111 of 1968 R. & H. Act	Aug. 13, 1968	90-483	[3]$1,000,000	None

[1]Project cost may go to $2,000,000 if project is located in a major disaster area designated by the President.
[2]A project exceeding $1 million will be transmitted to Congress for specific authorization.
[3]Federal cost may go to higher amount if project is located in a major disaster area designated by the President.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

Appendix B—Application of Multiobjective Planning Framework to Continuing Authorities Program

1. *General.* The planning process described in the ER 1105-2-200 series of regulations including the implementation of Federal planning and evaluation criteria, are generally applicable to studies conducted under the Continuing Authorities Program. However, due to the limited scope of many of the plans and projects considered under this program, modification of the *process* is appropriate. Specific modification of the requirements of the planning criteria is not appropriate since the legislative and executive authorities setting forth these criteria do not differentiate between various types of level C implementation studies. Discretion must be employed by reporting officers and reviewers of Detailed Project Reports to insure that projects recommended for implementation by the Corps have been selected on the basis of information and analyses consistent with the WRC Principles and Standards, while at the same time keeping the requirements for information and analyses consistent with the scope of the study, solutions recommended, and the Program completion-time objectives outlined in § 263.18 of this regulation.

2. *Plan Formulation Stages.*

a. *Stage 1—Reconnaissance Study (Recon).* As presented in para. 6c, a Reconnaissance will replace the Development of a Plan of Study as the primary element of Stage 1 planning. As a general rule, a Recon should be conducted by a study team consisting of an engineer, an economist, and an environmentalist. A one-to-two day field reconnaissance should be sufficient to analyze the need for a project, to develop sketch plans, discuss views and capabilities of local interests, and identify the economy of the potential project area and possible environmental issues that would need to be addressed if a feasibility study were to be conducted. Additional effort should pinpoint all data deficiencies, types of investigations required for the feasibility study, and the estimated cost of the study. The latter identification process can be developed as a Plan of Study for the feasibility study, if approved and funded. To accomplish the intended purpose of the Recon, within the time and cost objectives given in this regulation, reporting officers are not required to develop a specific project (except for emergency situations under Section 14 or 3 Authorities), but should only provide the information required to make a decision as to whether there is a Federal interest in conducting a feasibility study. Mature, seasoned judgment is a prime requisite.

b. *Stage 2—Development of Alternative Plans.* While the ER 1105-2-200 series of regulations provides for a three-stage development of plans, studies under Continuing Authorities may consolidate these two final stages (intermediate and detailed), into a single stage, if appropriate. This consolidation does not eliminate any of the planning tasks, as discussed in para 3 below, nor does it diminish the concept of screening a full array of alternatives including nonstructural measures, with increasing levels of detail in the assessment of impacts and evaluation as planning progresses to plan selection. The primary emphasis in making the consolidation of these two stages is that the plan selection is normally made on the basis of more limited data and analyses than appropriate for studies conducted under the Level C Survey Program or the Phase I AE&D Program.

c. *Stage 3—Development of Recommended Plan.* The feasibility study under the Continuing Authorities Program will include the design of a recommended plan to the extent necessary to proceed directly from the Detailed Project Report to preparation of plans and specifications. While studies under the Level C Survey Program would complete plan formulation prior to accomplishing detailed project design, the nature of this Program necessitates a flexible design phase, wherein changes in scope of the selected plan, with accompanying changes in project impacts and evaluation, are to be expected and handled by planning personnel in order that the DPR will reflect a selected plan consistent with completed detailed design and a plan justified under the current Federal evaluation criteria for recommending Federal participation.

3. *Planning Tasks.*

a. *Problem Identification.* While planning under Continuing Authorities is to be on a multi-objective basis, the range of problems that can be addressed under a particular Program authority is more limited than normally considered in the conduct of studies specifically authorized by Congress. A good effort to focus the study on relevant problems should be made in the Recon phase of the study, while more intense efforts at data collection and definition of the problems and associated needs should be accomplished during Stage 2 planning.

b. *Formulation of Alternatives.* There are no fundamental differences in the process of formulating alternatives under these Program authorities than in Level C Survey studies, with the exception that the array of alternatives will normally be more limited based on the discussion in para 3a above. The level of detail to which the alternatives are formulated, with associated assessments of impacts and evaluation of beneficial and adverse contributions, will vary greatly de-

pending on the study authority. In some cases, alternatives will be screened and eliminated for various reasons without full development of a tentative plan which can be assessed and evaluated. Such screening is consistent with the nature of this Program; however, good judgment and interdisciplinary participation should be emphasized in such preliminary screenings. The guidance in the ER 1105-2-200 series of regulations with regard to consideration of non-structural measures and formulation of NED and EQ plans, is fully applicable to studies conducted under this Program.

c. *Impact Assessment.* There is no difference in the requirements for the assessment of impacts for studies conducted under Continuing Authorities and those under the Level C Survey Program. As in all studies, the extent to which information is obtained to adequately assess impacts of alternative plans is a matter of discretion of the reporting officer, bearing in mind the requirements of the National Environmental Policy Act of 1969 (NEPA) and Section 122, Public Law 91-611.

d. *Evaluation.* The processes, analyses and displays for evaluation of alternative plans as prescribed in the ER 1105-2-200 series of regulations are generally applicable to studies conducted under Continuing Authorities. Again, the level of detail, and not the process itself, is to be consistent with the study authority and the needs of the decision-making process.

PARTS 264–266—[RESERVED]

PART 273—AQUATIC PLANT CONTROL

Sec.

273.10 Purpose.
273.11 Applicability.
273.12 References.
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273.17 Annual budget request.
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APPENDIX A—AQUATIC PLANT CONTROL PROGRAM LEGISLATIVE AUTHORITY
APPENDIX B—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM REPORTS
APPENDIX C—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM ENVIRONMENTAL IMPACT STATEMENTS
APPENDIX D—WORK PROGRESS REPORT
APPENDIX E—PREVENTIVE SAFETY MEASURES IN HANDLING OF HERBICIDES

AUTHORITY: Sec. 302, Title III, Pub. L. 89-298, River and Harbor Act of 1965 (33 U.S.C. 610), October 27, 1965.

SOURCE: 41 FR 22346, June 3, 1976, unless otherwise noted.

§ 273.10 Purpose.

This regulation prescribes policies, procedures and guidelines for research, planning and operations for the Aquatic Plant Control Program under authority of section 302 of the Rivers and Harbors Act of 1965.

§ 273.11 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having civil works responsibilities.

§ 273.12 References.

(a) Section 302, Pub. L. 89-298, (79 Stat. 1092), Rivers and Harbors Act of 1965, (Appendix A).

(b) Pub. L. 92-516, Federal Insecticide, Fungicide and Rodenticide Act of 1972, (86 Stat. 973), 21 October 1972.

(c) 40 CFR 180, Tolerances and exemptions from tolerances for pesticide chemicals, 2,4-D, subpart C (F) 16 December 1975.

(d) Pub. L. 91-596, Occupational Safety and Health Act of 1970, (84 Stat. 1609, 29 U.S.C. 668), 29 December 1970.

(e) 29 CFR 1960, Safety and Health Provisions for Federal Employees, FEDERAL REGISTER, Vol. 39, No. 9, 9 October 1974.

(f) ER 11-2-240, "Civil Works Activities, Construction and Design."

(g) ER 70-2-3, "Civil Works Research and Development Management System."

(h) ER 1105-2-507, "Preparation and Coordination of Environmental Statements." (33 CFR 209.410)

(i) ER 1105-2-811.

§ 273.13 Program policy.

(a) *Program orientation.* The Aquatic Plant Control Program is designed to deal primarily with weed infestations of major economic significance including those that have reached that stage (such as water-hyacinth) and those that have that potential (such as alligatorweed and Eurasian

watermilfoil) in navigable waters, tributaries, streams, connecting channels and allied waters. This does not imply that the infestation must have countrywide distribution. However, the infestation should constitute a known problem of economic importance in the area involved. Initial planning should constitute investigation of a specific problem weed or weed complex, not generalized surveys of aquatic vegetation. The common submersed aquatics and floating or emergent, wetland, marsh, and swamp vegetation do not generally meet those criteria for special problems merely because they may qualify as "obnoxious aquatic plants" under the language of the legislation authorizing the program except as indicated in § 273.13(b).

(b) *Work not eligible under this program.* Weed control for operation and maintenance of reservoirs, channels, harbors, or other water areas of authorized projects under jurisdiction of the Corps of Engineers or other Federal agencies will not be undertaken as a part of the Aquatic Plant Control Program, except as such areas may be used for experimental purposes in research performed for the program. Aquatic plant control work for the operation and maintenance of Federal projects are eligible to be included under this authority for the purpose of cost-sharing with participating State or local agencies, but are not eligible for budgeting or funding under the Aquatic Plant Control Program.

(c) *Applied research.* Applied research developed by OCE with the assistance of the Interagency Aquatic Plant Control Research Advisory Committee and the appropriate Division Engineer will be an all Federal cost. This research will be accomplished through contracts with Federal, State and private research institutions. A research planning meeting will be held the last quarter of each calendar year to provide professional presentation of current research projects, review of current operation activities, and review new research proposals. Requested programs, estimated cost, and other information will be developed in the field and submitted to HQDA (DAEN-CWD-R) Washington, DC 20314, for approval and financing as prescribed by ER 70-2-3. Attendance of the Technical Advisory Committee meetings by Corps personnel has been authorized.

(d) *Planning.* Planning will be an all Federal cost item, will be developed by reporting officers in accordance with their needs and will be fully justified for funds requested. Normally, the program will be initiated with a reconnaissance report (§ 273.14(a)) and will be accomplished under a State design memorandum (§ 273.14(b)). Supplement design memorandums will be used to implement changes in the program. These memorandums will establish a continuing program and will be used to enable the Chief of Engineers to allot available funds on a priority basis in accordance with the urgency of the needs of each area.

(e) *Criteria for recommending a Federal project.* (1) A recommendation favorable to adoption of the project under the authority provided by section 302, as amended, will be warranted when the following conditions exist:

(i) The problem and practical measures of improvement are of such nature that there is a clear and definite Federal interest warranting Federal participation under the purview of this special authority.

(ii) The proposed work will result in an independent and complete-within-itself project.

(iii) Analysis based on sound economic principles clearly demonstrates that the project will provide information and/or control of aquatic plants.

(iv) Each separable element of the project, as well as the entire project, is economically justified.

(v) Local interests are legally and financially able and willing to meet fully all requirements of local cooperation.

(2) Recommendations for preparation of a detailed planning report for new work on a new problem in a District or Division where control of other aquatic plant problems is currently underway should consider whether such new work represents an equal or higher priority of need for allocation of funds in the same State. Projects will not be recommended which produce undesirable short-term

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or long-term damage to the human or natural environment.

§ 273.14 Planning procedures.

Investigation of new problems and/or additional control operations not covered by previously approved plans will begin with preparation of a preliminary report based on reconnaissance-type investigations. If it is determined that further planning of a more detailed nature is warranted, approval of a reconnaissance report by HQDA (DAEN-CWO-R) Washington, D.C. 20314 will be followed by further investigations. Normally, a detailed State design memorandum encompassing all aspects of the problem and a proposed plan of action for dealing with it will be prepared.

(a) *Reconnaissance reports.* Investigations for reconnaissance reports will be limited to readily available data and information. Field surveys and office studies should be limited to minimum essentials for further detailed planning. The reconnaissance report will be used for the overall program planning and should contain adequate information for these purposes.

(1) *Authorization.* Preparation of a reconnaissance report will be authorized by OCE granting of work allocations and allotment of funds based on requests submitted by reporting officers. Funds for such reports may be requested in annual submissions of budget requests and subsequently to DAEN-CWO-R as required to meet unanticipated needs. Since the program is proceeding under a limited budget, costs should be limited to minimum requirements. Only in exceptional cases will more than $3,000 be made available for a reconnaissance report on a problem in any one district.

(2) *Content of reports.* Where findings and conclusions are unfavorable to undertaking further detailed planning, a brief letter report summarizing the problem and findings should be submitted to OCE to provide a basis for answering outstanding inquiries. Where findings and conclusions are favorable, a more detailed report should include, but not be limited to, the information contained in Appendix B.

(b) *State design memorandum.* When authorized to prepare a detailed planning report, the reporting officer will proceed with necessary investigations and develop plans and data in sufficient detail to assure a complete and fully operable aquatic plant control operation. The report will be in the form of a State design memorandum (SDM). The SDM will be prepared by the District, reviewed by the Division, then forwarded to DAEN-CWO-R for review and approval. The data presented will be used to set priorities and request funds to finance activities on various projects. Fund requirements are divided into four categories: applied research; planning; control operations; and development.

(c) *Review of the proposed design Memoranda.* Review of State design memoranda should insure that:

(1) The work involved is not the type normally provided by local entities or private interests as a local responsibility.

(2) The cost of control operation will be shared between the Federal Government (70 percent) and the State receiving the benefit (30 percent).

(3) The actual control operation can be done by Federal, State, and/or private company facilities, under agreements specifying the details and standards of work to be performed.

(4) Consideration will be given in the planning procedure to include physical, chemical and biological methods of control. Priority will be given to biological systems where feasible.

(d) *Environmental impact statement requirements.* Prior to funding of a plant control project programs which involve pest control operations, such as aquatic plant control, and affect either man's health or his environment (soil, flora, fauna, aesthetics, water resources), are candidates for review and possible preparation of an environmental impact statement (EIS) under the National Environmental Policy Act. (The information outlined in Appendix C should be included in the analysis section of an EIS in addition to the treatment prescribed by 33 CFR 209.410.)

§ 273.15 Work Progress Report.

Reporting officers will prepare and submit to DAEN-CWO-R a detailed description of anticipated Aquatic Plant Control projects for the next calendar year. Submissions must reach OCE by 15 December of the preceding calendar year, in the format prescribed by Appendix D.

§ 273.16 Operations.

Operational activities will be conducted by reporting officers in accordance with approved annual work plans and State design memoranda. Questions should be referred to HQDA (DAEN-CWO-R) WASH DC 20314.

(a) *Certification of pesticide applicators.* Activities will be subject to the provisions of the Federal Insecticide, Fungicide and Rodenticide Act of 1972, (reference § 273.12(b) and (c)), regarding the training and certification of pesticide supervisors and/or applicators.

(b) *Safety in use of herbicides.* Use of herbicides will be in accordance with the Occupational Safety and Health Act of 1970, reference § 273.12 (d) and (e). Some herbicides are toxic chemicals and must be used with utmost care. Operators and applicators are required to use respiratory protective devices to prevent inhalation of toxic dusts, vapors, or gases; protective clothing to protect the skin; and eye protection. Some of the primary precautions which must be observed in handling herbicides are listed in Appendix E. Questions concerning safety should be referred to HQDA (DAEN-SO) Washington, D.C. 20314.

§ 273.17 Annual budget request.

The Aquatic Plant Control Program is a continuing activity funded under Construction, General, subject to monetary limitations of $5,000,000 on annual appropriations authorized for the program. Recommendations and supporting data will be submitted in accordance with ER 11-2-240. The amounts requested should be the minimum requirements for the purpose of the authorized program to meet essential needs and should be within the Division's capability to utilize within the budget year taking into account the foreseeable availability of local funds to meet cost-sharing requirements for control operations.

§ 273.18 Clearinghouse coordination.

Procedures prescribed under § 384.15 of Chapter II will be observed.

APPENDIX A—AQUATIC PLANT CONTROL PROGRAM LEGISLATIVE AUTHORITY

Section 104 of the Rivers and Harbors Act, approved 3 July 1958 (72 Stat. 297, 300), as amended by section 104 of the Rivers and Harbors Act of 1962 (76 Stat. 1173, 1180), and as amended by section 302 of the Rivers and Harbors Act, approved 27 October 1965 (79 Stat. 1092) states as follows:

SEC. 302(a) There is hereby authorized a comprehensive program to provide for control and progressive eradication of waterhyacinth, alligatorweed, Eurasian watermilfoil, and other obnoxious aquatic plant growths, from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States, in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes, including continued research for development of the most effective and economic control measures, to be administered by the Chief of Engineers, under the direction of the Secretary of the Army, in cooperation with other Federal and State agencies. Local interests shall agree to hold and save the United States free from claims that may occur from control operations and to participate to the extent of 30 per centum of the cost of such operations. Costs for research and planning undertaken pursuant to the authorities of this section shall be borne fully by the Federal Government.

(b) There are authorized to be appropriated such amounts not in excess of $5,000,000 annually, as may be necessary to carry out the provisions of this section. Any such funds employed for control operations shall be allocated by the Chief of Engineers on a priority basis, based upon the urgency and need of each area, and the availability of local funds.

APPENDIX B—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM REPORTS

1. Location and brief description of problem area if necessary for understanding environmental factors, including a suitable map (appendix).

2. Statement of problem with brief description of physical factors pertaining thereto, including identification by common and scientific name of the plant or plants concerned, origin of infestation and likely

source of reinfestation; extent of infestation including estimated surface area, depth or density; nature of physical and economic damages occasioned by presence of the infestation; and other information clarifying the nature and magnitude of the problem. Explanation should be given of how and why the infestation meets the principal criteria governing the program.

3. Preliminary plan of procedure, if any, for control operations or engineering works, including control methods, materials, equipment and procedures that may be employed. If sufficient information is not available to outline a preliminary plan for operation control, the report should include a brief statement of the special problems in control methods that need to be resolved before detailed planning can be undertaken.

4. Preliminary project cost estimates broken down into planning and operation costs for Federal and non-Federal budgeting. The report should present sufficient data concerning cost estimates for review by item and unit price.

5. Preliminary economic evaluation with approximation of benefits and brief summary of supporting data classified as general or local.

6. Discussion of availability of authority for State participation in the program, the interest of State agencies in such participation, and the likelihood of State funds being available for cost-sharing required for any control operations.

7. Cost estimate for subsequent preparation of a detailed planning report, and estimated length of time to complete after receipt of funds, and schedule of funding by fiscal years.

Appendix C—Information Requirements for Aquatic Plant Control Program Environmental Impact Statements

1. Description of the problem.

a. *Pests.* Identify the pest to be controlled by common name. Be as specific as possible.

b. *Location and size of infestation.* Describe the target area as specifically as possible.

c. *Severity of infestation.* Discuss the degree and importance of the pest problem.

d. *History of infestation.* Discuss obvious development as established.

e. *Criteria for identification of the treatment areas.* Include technical details as established.

f. Possible cumulative effects of the proposed action in relation to other Federal or non-Federal pesticides application in the treatment area.

g. *Relationship to environmental situation.* Non-target organisms and integrated pest management programs.

2. Program Accomplishments:

a. *Goals.* Discuss practical control levels.

b. Monitoring accomplishment level.

3. Identification of each chemical:

a. *Name.* Use common or coined names, and/or chemical name.

b. *Active ingredient.* Give name and percentage.

c. *Status of Federal registration.* Give registration number.

4. Application:

a. *Form applied.* Dust, granule, emulsion, bait solution, gas, etc.

b. *Choice of equipment and techniques.* Discuss general details of method of application.

c. *Use strength.* Give concentration of the active ingredient as applied.

d. *Rate.* Give rate of application in pounds per acre or other rate.

e. *Frequency.* Discuss probable frequency of application.

f. *Acreage or other descriptive unit.* Discuss area of proposed control.

g. *Site description.* Lake, river, drainage canal, irrigation canal, etc.

h. *Sensitive areas.* Discuss areas of potential contamination.

i. *Container disposal.* Discuss disposal requirements.

j. *Safety precautions.* Discuss hazards of exposure.

5. Alternative measures: Discuss details of alternative methods of control.

Appendix D—Work Progress Report

Aquatic Plant Control Program

(Example)

District: Vicksburg. Year Ending: 1 December 1974.

Division: Lower Mississippi Valley. Date Submitted: 15 December 1974.

1. *Status of contracts scheduled for award in current fiscal year.*

Contract	Scheduled award date	Actual award date
Plant control operations....	July 1973.....	July 31, 1973.

2. *Comparison of scheduled and actual current FY obligations and expenditures to date.*

	Approved Mar. 28, 1974	Actual	Difference
Obligations.....	$4.7	$3.2	−$1.5
Expenditures.....	4.1	2.9	−1.2

3. *Explanation of difference.* Not applicable.

4. *Outlook for meeting programmed objectives.*

a. *Programmed objectives.* Full utilization of work allowance.

b. *Outlook.* We expect to meet our programmed objectives.

5. *Problems and corrective action taken or proposed action.* Not applicable.

6. *Status of over-all program progress.* Contract for plant control operations was awarded in July 1973 to take advantage of last part of plant growing season. Plant control operations began in October 1973 and have been completed for this fiscal year. Surplus funds in the amount of $21,700 will be revoked.

Appendix E—Preventive Safety Measures in Handling of Herbicides

1. Follow the label on each container before using the contents. The manufacturers are required by law to list recommendations and precautions.

2. Weather conditions are important. Winds could carry toxic sprays and dusts to areas not under your control, causing accidental poisoning to the public or domestic animals.

3. Smoking is not permitted while herbicides are being handled.

4. All herbicides must be handled in well ventilated areas to minimize inhalation of toxic vapors.

5. Shower and washing facilities must be near herbicides mixing areas.

6. Any contamination of the skin, particularly with liquid concentrations or solutions, must be immediately washed off with detergent and water.

7. Protective clothing is used in conjunction with respiratory protective devices to prevent skin contact and inhalation of herbicides. Recommended articles of protective clothing are rubber aprons, coveralls, chemical splash goggles, safety shoes and hard hats. A lightweight water and chemical resistant throw away type protective clothing that is impervious to herbicides is now available. In warm geographical areas this type of lightweight protective clothing would be beneficial in reducing physical stress to applicators. Additional protection is afforded by protective skin cream.

8. Clothing contaminated by spillage must be removed immediately and thoroughly laundered before wearing. Special care is required to prevent contamination of the inside of gloves.

9. Approved respirators must be worn while herbicides are being mixed, and when dusts or liquids are being handled or sprayed. Care should be exercised when selecting the respirator type to insure that it is designated specifically for the substance to be used. Each canister must be labeled and approved by the Bureau of Mines or HEW (NIOSH). Filters or canisters must be changed after 8 hours use and more often if odor of the herbicide is detected. (Always have extra cartridges available when needed.)

10. Herbicide storage, mixing and formulation facilities.

a. All herbicides must be stored in a dry, well ventilated, separate room, building or covered area not accessible to authorized personnel or the public and placed under lock and key.

b. Identification signs should be placed on rooms, buildings, and fences to advise of the contents and warn of their hazardous nature.

c. Where applicable, label the outside of each storage with the "Danger," "Poison," and "Pesticide Storage" signs.

d. Fire extinguishers must be installed near door of material storage room. Diluted oil based herbicides are flammable and must be stored separate from other materials.

e. All herbicide storage, mixing and formulation areas must have adequate ventilation in order to reduce inhalation of toxic vapors. Sparkproof lighting fixtures should be installed in closed storage areas to eliminate ignition hazards.

11. Empty herbicide containers must be disposed of properly. Do not burn them. When herbicides or defoliants volatize, the resulting vapors may be poisonous to humans, and they may damage nearby plants, crops or shrubbery; also, herbicides or defoliants containing chlorates may be a serious fire hazard when heated.

12. Glass herbicide containers should be disposed of by breaking. Chop holes in top, bottom, and sides of metal containers or crush them so they cannot collect water or be reused. After breaking or puncturing them, bury the containers at least 18 inches deep in an isolated area provided for this purpose, away from water supplies or high water tables. Records to locate such buried herbicides within the landfill site should be maintained. Post warning signs.

13. Safety programs developed for the safe handling and mixing of toxic chemicals should be coordinated with the Safety Office prior to implementation.

PART 274—PEST CONTROL PROGRAM FOR CIVIL WORKS PROJECTS

Project Operation

Sec.

274.1 Purpose.
274.2 Applicability.
274.3 References.

Sec.

274.4 Pesticide management.
274.5 Certification.
274.6 Division/district pest control programs.
274.7 Authorization of pesticide use.
APPENDIX A—PREVENTIVE SAFETY MEASURES IN HANDLING OF PESTICIDES

AUTHORITY: Pub. L. 92-516, Federal Insecticide, Fungicide and Rodenticide Act of 1972 (86 Stat. 973, 21 Oct 72, 40 CFR Part 171, Federal Certification of Pesticide Applicators.

SOURCE: 42 FR 41118, Aug. 15, 1977, unless otherwise noted.

PROJECT OPERATION

§ 274.1 Purpose.

The purpose of this regulation is to assign responsibilities and prescribe procedures concerning the use of chemicals in the Corps pest control program at all civil works projects. It also presents guidance for the preparation and submission of an annual pest control summary report.

§ 274.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 274.3 References.

(a) Pub. L. 92-516, Federal Insecticide, Fungicide and Rodenticide Act of 1972 (86 Stat. 973), 21 October 1972.

(b) Pub. L. 91-596, Occupational Safety and Health Act of 1970 (84 Stat. 1609, 29 USC 668) 29 December 1970.

(c) Medical Surveillance Guide, U.S. Army Environmental Hygiene Agency, January 1975.

(d) Guide for the Medical Surveillance of Pest Controllers, U.S. Army Environmental Hygiene Agency, March 1976, as amended.

(e) Pesticide Applicator Training Manual, Cornell University, Ithaca, New York, September 1974.

(f) Plan for Certification of Pesticide Applicators, DOD, June 1976.

§ 274.4 Pesticide management.

(a) *Administration.* The Division Engineer is responsible for implementation of the program, and providing for the training of pest control personnel, safe use of highly toxic materials and the proper application of restricted-use pesticides. District programs will be reviewed by the Division Engineer for the selection of suitable pest control agents, up-to-date and economical methods of control, and the proper use and maintenance of pest control equipment. Field Operating Agencies (FOA) will designate a single point of contact for pesticide matters.

(b) *Personnel actions.* Pesticide duties will be identified in applicable job descriptions whether they constitute a major duty or not. Such job descriptions will also note the employees responsibility for using personal protective equipment and clothing provided and for following established health and safety practices and procedures. Standard Form 78 medical examination will be augmented by the specific diagnostic tests for the occupations identified in § 274.4(c). Prescribed preplacement medical examinations will be provided as part of the personnel action process before anyone is permitted to perform pesticide duties.

(c) *Medical surveillance.* Preplacement, periodic and pretermination medical examinations of the type and extent set forth in Section III, U.S. Army Environmental Hygiene Agency (USAEHA) "Guide for the Medical Surveillance of Pest Controllers" will be provided for personnel involved in pesticide operations. Additional information is contained in USAEHA "Medical Surveillance Guide (Guide for Job-Related Examinations)." Appropriate medical records will be maintained in official personal folders.

(d) *Personnel training.* All personnel directly involved in pest control must be properly trained in the safe application of herbicides, insecticides, rodenticides, fumigants and fungicides. The current plan for training and certification of pest control personnel requires that all pest control applicators and/or supervisors satisfactorily complete (1) the correspondence course, "Basic Pest Control Technology" NTTC 150, available from NAVFAC Technical Training Command, Norfolk, Virginia 23511 and a three day (20 hr) conference training course conducted by the Army Health Services Command

(AHSC) at Fort Sam Houston, Texas 78234, for Civil Works personnel, or a three day (20 hr) special training course conducted by the Division Engineer, to include information presented in the "Pesticide Applicator Training Manual", § 274.3(e) or (2) a B.S. degree in agronomy, entomology, forestry or horticulture from an accredited college or university.

(e) *Restricted-use pesticide training.* For agency certification § 274.3(f) Civil Works supervisors and applicators using the higher toxicity Restricted-Use pesticides are required to complete Resticted-Use Pesticide training as given at Navy facilities at Jacksonville, Florida, or Alameda, California, Wichita Falls Air Base, or the Army Health Services Command, Fort Sam Houston, Texas. College and university programs which are acceptable for State certification of restricted-use pesticide applicators may be used in lieu of the above.

(f) *Coordination with EPA.* The Environmental Protection Agency is expected to publish regulations listing pesticides classified for restricted-use by October 1977. The Division Engineer will be responsible for close coordination with EPA Regional Offices in order to comply with the regulatory requirements for restricted-use pesticides.

(g) *Exposure to and protection from pesticide hazards.* Basic health and safety practices and procedures including personal protective equipment and clothing, work area layouts, storage and application considerations are identified in Appendix A of this regulation. Additional guidance is contained in Section II and Appendix A of the USAEHA "Guide for Medical Surveillance of Pest Controllers."

(h) *Contracting for pest control services.* All contracts for pest control services must receive Technical review and approval from professional pest control management personnel prior to advertisement of the contract and procurement of services. The contractor will be required to submit proof that his supervisory personnel to be employed on the contract are certified in the specific categories for operations being conducted in accordance with an approved state plan in effect in the area concerned.

§ 274.5 Certification.

Under the provisions of Section 4, Pub. L. 92-516, the Environmental Protection Agency is responsible for Federal certification of pesticide applicators through its development of a single Government Agency Plan (GAP). By letter dated December 30, 1976, the Administrator of the Environmental Protection Agency has stated that Federal certification will no longer be undertaken pursuant to a single GAP. The Department of Defense has developed an Agency Plan for certification of its pesticide applicators which has been approved in principle and concept. It has been determined that the DOD Agency Plan satisfies the training requirements for certification of Civil Works personnel. Pending final approval of the DOD Agency Plan, all Corps of Engineers pesticide applicators will be certified in accordance with the criteria described in this regulation by issue of a certificate of training and competency (DA Form 87, 1 Sep 54), signed by the Training Officer and the Division Engineer.

§ 274.6 Division/district pest control programs.

(a) *Guides.* Referenced technical manuals, and Engineer Circulars issued from time to time, will be used as guides in selecting the type of chemicals and the method of application in the control of vegetation and pests at civil works projects.

(b) *Responsibilities and reports (RCS DAEN-CWO-48).* Districts will prepare and submit to the Divisions detailed descriptions or their anticipated use of pesticides for review and approval by the appropriate Division.

§ 274.7 Authorization of pesticide use.

(a) Programs approved in § 274.6(b) must be those as described on the pesticide label. Pesticide uses which are different from the registered use, require amendment of the label, approved by the Environmental Protection Agency. Data requirements for this use must be supplied before an

amendment will be made by the Agency. Substantial time and effort are required for such action.

(b) If an unexpected outbreak of a pest requires control measures which are not according to the registered use, such control effort is viewed as an emergency measure and may be undertaken at the discretion of the Division Engineer. An emergency will be deemed to exist when:

(1) A pest outbreak has or is about to occur and no pesticide registered for the particular use, or alternative method of control, is available to eradicate or control the pest.

(2) Significant economic or health problems will occur without the use of the pesticide.

(3) The time available from discovery or prediction of the pest outbreak is insufficient for a pesticide to be registered for the particular use. In determining whether an emergency condition exists, the Administrator will also give consideration to such additional facts requiring the use of Section 18 § 274.3(a) as are presented by the applicant.

(c) Emergency operations should be documented by a request for a specific exemption, prepared by the District and forwarded through channels to HQDA (DAEN-CWO-R) WASH DC 20314 for transmittal to EPA.

(1) Each specific exemption must be requested in writing, by the head of the Federal agency or the Governor of the State involved, or other official designee, addressed to the Administator, setting forth the following information:

(i) The nature, scope and frequency of the emergency.

(ii) A description of the pest known to occur, the places or times it may be likely to occur and the estimated time when treatment must be commenced to be effective.

(iii) Whether a pesticide registered for the particular use, or other method of eradicating or controlling the pest, is available to meet the emergency, and the basis for such determination.

(iv) A listing of the pesticide or pesticides the agency proposes to use in the event of an outbreak.

(v) Description of the nature of the program for eradication or control. Such description should include:

(A) Quantity of the pesticide expected to be applied;

(B) Specific Area or place of application;

(C) Method of application;

(D) Duration of application;

(E) Qualifications of personnel involved in such application.

(vi) Statement of economic benefits and losses anticipated with and without the exemption and under reasonable alternatives.

(vii) Analysis of possible adverse effects on man and the environment. If an Environmental Impact Statement has been prepared by an agency, in accordance with that agency's regulations implementing the National Environmental Policy Act of 1969, and is relevant to the above, it shall be submitted with the application.

(viii) Such exemptions, if granted, are valid only for the specific situation involved and are subject to such restrictions as the Administrator may prescribe in granting the exemption. Such restrictions may include, among others, limitations on the quantity of the pesticide to be used, the conditions under which the pesticide may be applied, restrictions as to the person who may apply the pesticide and the type of monitoring activities which should be conducted. Within one year of the granting of the exemption, a summary report on what action was taken to meet the emergency and on the outcome of such action, must be forwarded to HQDA (DAEN-CWO-R) WASH DC 20314, for forwarding to EPA.

Appendix A—Preventive Safety Measures in Handling of Pesticides

1. Follow the label on each container before using the contents. The manufacturers are required by law to list recommendations and precautions.

2. Weather conditions are important. Winds could carry toxic sprays and dusts to areas not under your control, causing accidental poisoning to the public or domestic animals.

3. Smoking is not permitted while pesticides are being handled.

4. All pesticides must be handled in well-vetilated areas to minimize inhalation of toxic vapors.

5. Shower and washing facilities must be near pesticide mixing areas.

6. Any contamination of skin, particularly with liquid concentrations or solutions, must be immediately washed off with detergent and water.

7. Protective clothing is used in conjunction with respiratory protective devised to prevent skin contact and inhalation of pesticides. Recommended articles of protective clothing are rubber aprons, coveralls, chemical splash goggles, safety shoes, and hard hats. A lightweight water and chemical resistant throw away type protective clothing that is impervious to herbicides is now available. In warm geographical areas this type of lightweight protective clothing would be beneficial in reducing physical stress to applicators. Additional protection is afforded by protective skin cream.

8. Clothing contaminated by spillage must be removed immediately and thoroughly laundered before wearing. Special care is required to prevent contamination of the inside of gloves.

9. Approved respirators must be worn while pesticides are being mixed, and when dusts or liquids are being handled or sprayed. Care should be exercised when selecting the respirator type to insure that it is designated specifically for the substance to be used. Each respirator must be labeled and approved by the U.S. Department of Agriculture or NIOSH. Filters or canisters must be changed after 8 hours use and more often if odor of the pesticide is detected. (Always have extra cartridges available when needed).

10. Pesticide storage, mixing, and formulation facilities:

(a) All pesticides must be stored in a dry, well ventilated, separate room, building, or covered area not accessible to unauthorized personnel or the public and placed under lock and key.

(b) Identification signs should be placed on rooms, buildings, and fences to advise of the contents and warn of their hazardous nature.

(c) Where applicable, the outside of each storage area should be labeled with "Danger," "Poison," and "Pesticide Storage" signs.

(d) Fire extinguishers must be installed near the door of materiel storage rooms. Diluted oil based pesticides are flammable and must be stored separate from other materials.

(e) All pesticide storage, mixing, and formulation areas must have adequate ventilation in order to reduce inhalation of toxic vapors. Sparkproof lighting fixtures should be installed in closed storage areas to eliminate ignition hazards.

11. Empty pesticide containers must be disposed of properly. Do not burn them. When herbicides or defoliants volatilize the resulting vapors may be poisonous to humans, and they may damage nearby plants, crops, or shrubbery; also, pesticides or defoliants containing chlorates may be a serious fire hazard when heated.

12. Glass pesticide containers should be disposed of by breaking. Chop holes in top, bottom, and sides of metal containers or crush them so they cannot collect water or be reused. After breaking or puncturing them, bury the containers at least 18 inches deep in an isolated area provided for this purpose, away from water supplies or high water tables. Records to locate such buried pesticides within the landfill site should be maintained. Post warning signs.

13. Safety programs developed for the safe handling and mixing of toxic chemicals should be coordinated with the Safety Office prior to implementation.

PART 275—[RESERVED]

PART 276—WATER RESOURCES POLICIES AND AUTHORITIES: APPLICATION OF SECTION 134a OF PUBLIC LAW 94-587

Sec.

276.1 Purpose.
276.2 Applicability.
276.3 [Reserved]
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276.8 Cessation.

AUTHORITY: Sec. 134a, Pub. L. 94-587, 90 Stat. 2928.

SOURCE: 42 FR 9175, Feb. 15, 1977, unless otherwise noted.

§ 276.1 Purpose.

This establishes policy guidelines and procedures for Corps of Engineers application of the provisions of section 134a of Pub. L. 94-587.

§ 276.2 Applicability.

Policies and procedures contained herein apply to all elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

§ 276.3 [Reserved]

§ 276.4 Legislative provisions.

Section 134a authorizes and directs institution of a procedure for certification, at the request of local interests, that particular improvements for flood control to be locally constructed can reasonably be expected to be compatible with a specific, potential Federal project under study. Local interests may proceed to construct such certified compatible improvements at local expense with the understanding that such improvements can be expected to be included in the scope of the Federal project, if later authorized, both for the purposes of analyzing the costs and benefits of the project and assessing the local participation in the costs of such project. This legislative authority ceases to be in effect after December 31, 1977.

§ 276.5 Legislative history.

Discussion of this legislation is contained in the reports by the Senate Committee on Public Works and the House Committee on Public Works and Transportation which accompanied S. 3823, the Water Resources Development Act of 1976 (Pub. L. 94-587). These reports make clear that Congress intended to encourage local communities to assume responsibility and accelerate local cooperation in reducing urban flooding dangers without committing the United States to any future Federal expenditure. The Senate Committee report noted that some communities might be reluctant to undertake compatible local flood control measures for fear that the local work would jeopardize the potentially favorable cost-benefit ratio of a prospective Federal project. The Act authorizes establishing a procedure for certification of certain local improvements undertaken for the purpose of flood control. Cost assignable to that part of the local improvement that would constitute an integral part of a prospective Federal plan would be eligible to be recommended for credit toward required local cooperation. The Senate Committee report specifically stated that:

* * * This flexibility should in no way be interpreted as a Federal assurance of late approval of any project. While it is in no way a Federal commitment, this provision assures the city that the work it undertakes, once certified, will not be removed from the cost-benefit analysis. and it assures the city that such local work will be credited toward the local costs of cooperation, should the project be later authorized. This will not, however, qualify the community for any cash refunds. If the local costs on such certified work exceed the local share, when later computed, the local government must assume that extra cost. * * *

§ 276.6 General policy.

(a) This provision will be applied only at locations where a congressionally authorized study is underway or where the study report has been forwarded for Executive Branch review or for consideration by Congress. If a study is underway, the District Engineer must have held the final public meeting and filed a draft EIS with CEQ prior to certification. Certification will be in response to a specific request from a State, city, municipality or public agency that is the prospective local sponsoring agency for the contemplated Federal plan under study.

(b) Work eligible for certification shall be limited to that part of the local improvement directly related to a flood control purpose.

(c) Only local work commenced after certification shall be eligible for certification except for local engineering work noted below in § 276.6(e). The work proposed for certification must meet the following requirements: The work will be separately useful even if the Federal Government does not authorize and construct the contemplated project; the work to be accomplished by the non-Federal entity will not create a potential hazard; certification of the proposal will be in the general public interest.

(d) Costs assigned to that part of the local improvement that would constitute an integral part of the prospective recommended Federal plan can be included for credit toward required local cooperation. The amount creditable shall equal the expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the

Corps of Engineers. However, credit will not exceed the amount the District Engineer considers a reasonable estimate of the reduction in Federal expenditures resulting from the local work. Costs of subsequent maintenance will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or Federal funds from other Federal sources, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount. However, there will be no corresponding reduction in the benefits credited for the local improvement.

(e) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those non-Federal engineering costs and overhead costs directly attributable to the creditable part of local work may be included in the amount credited.

§ 276.7 Procedures.

(a) Non-Federal entities desiring certification credit under the provisions of section 134a of Pub. L. 94-587 should confer with the District Engineer and submit a written application to him. The application will include full description of planned work, plans, sketches, and similar engineering data and information sufficient to permit analysis of the local proposal.

(b) The District Engineer shall review the engineering adequacy of the local proposal and its relation to the possible selected Federal Plan and determine what part of the proposed local improvement would be eligible for certification. Prior to certification, the District Engineer will obtain the concurrence—through the Division Engineer and the Chief of Engineers—of the Assistant Secretary of the Army (Civil Works) by forwarding a copy of the draft survey report and providing information on:

(1) Coordination with local interests including results of public meetings and circulation of the draft EIS.

(2) Basis for concluding the local plan is appropriate in relation to the prospective Federal plan.

(3) Total estimated cost of creditable work.

(4) The urgency for proceeding with the local plan.

(c) The District Engineer shall reply by letter stating to the local applicant what local work and costs can reasonably be expected to be creditable under the provisions of section 134a. This letter shall be the certification contemplated under section 134a. The certification shall include the following conditions:

(1) Issuance of certification shall not be interpreted as a Federal assurance regarding later approval of any project nor shall it commit the United States to any type of reimbursement if a Federal project is not undertaken.

(2) Issuance of the certification does not eliminate the need for compliance with other Federal, State, and local requirements, including any requirements for permits, Environmental Impact Statements, etc.

(3) If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(4) Certification shall expire 3 years after the date of certification if the non-Federal entity has not commenced the work contemplated by the certification.

(d) The non-Federal entity will notify the District Engineer when work commences. The District Engineer will conduct periodic and final inspections. Upon completion of local work, local interests shall provide the District Engineer details of the work accomplished and the actual costs directly associated therewith. The District Engineer shall audit claimed costs to a certain and confirm those costs properly creditable and shall inform the non-Federal entity of the audit results.

(e) During further Corps studies, the local work actually accomplished that would constitute a legitimate part of the overall recommended Federal project may be incorporated within any plan later recommended for authorization. It shall be permissible to include the accepted costs of such certified local improvement and the flood

control benefits properly attributable thereto in the benefit-cost computations for the recommended plan.

(f) If the Corps report recommends Federal authorization of a plan that incorporates credit for local work certified under section 134a, the report shall include a specific recommendation to cover this credit and shall provide full identification and description of the local work for which such credit is recommended.

(g) The District Engineer shall submit a copy of his certification letter and notification of creditable costs of completed work to the Assistant Secretary of the Army (Civil Works) through the Division Engineer and the Chief of Engineers.

(h) All justification sheets supporting new start recommendations for Advance Engineering and Design or Construction projects will include information on certification activities in the paragraph on local cooperation. The information should include but not be limited to date of certification, work completion, description and cost of credit work.

§ 276.8 Cessation.

The legislation specifies that this authority shall cease to be in effect after December 31, 1977. No requests for certification will be processed after that date. To be eligible for credit, proposals for local work must have been certified by the District Engineer no later than December 31, 1977. There is no requirement that the local improvement be initiated or accomplished by that date.

PART 277—WATER RESOURCES POLICIES AND AUTHORITIES: NAVIGATION POLICY: COST APPORTIONMENT OF BRIDGE ALTERATIONS

Sec.

277.1 Purpose.
277.2 Applicability.
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Appendix A—Sec. 6, Pub. L. 647 as Amended (33 U.S.C. 516)
Appendix B—Hypothetical Example of Cost Apportionment

Authority: Sec. 2, River and Harbor Act of 1920, 41 Stat. 1009, June 5, 1920; 33 U.S.C. 547.

Source: 44 FR 31129, May 30, 1979, unless otherwise noted.

§ 277.1 Purpose.

This regulation provides policies and guidelines for the apportionment of bridge alteration costs required in connection with navigation improvements recommended in reports transmitted to the Chief of Engineers for approval or submitted to Congress for authorization.

§ 277.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 277.3 References.

(a) Section 6, Pub. L. 647, 67th Congress, 21 June 1940, as amended (33 U.S.C. 516). (Appendix A).

(b) Section 6, Pub. L. 89-670, Department of Transportation Act, 15 October 1966 (49 U.S.C. 1655).

(c) Coast Guard reference: G-ECV-1, Truman-Hobbs Act.

(d) ER 1105-2-50.

(e) EP 1165-2-2 Appendix E.

§ 277.4 Definitions.

The following definitions are applicable to this regulation:

(a) "Bridge". The term bridge means a lawful bridge over navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, or if a State, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying highway traffic.

(b) "Bridge owner". Bridge owner means any State, county, municipality, or other political subdivision, or any corporation, association, partnership, or individual owning, or jointly

owning, any bridge, and, when any bridge shall be in the possession or under the control of any trustee, receiver, trustee in bankruptcy, or lessee, such term shall include both the owner of the legal title and the person or the entity in possession or control of such bridge.

(c) "Navigable waters". Navigable waters of the United States means those waterbodies, except the territorial seas, which are subject to the ebb and flow of the tide, or are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce.

(d) "Alteration". The term alteration includes changes of any kind, reconstruction, or removal in whole or in part.

§ 277.5 General.

Pub. L. 647 as amended, (33 U.S.C. 511-523) commonly referred to as the "Truman-Hobbs Act" provides for the alteration of railroad and highway bridges when found unreasonably obstructive to navigation. Section 6 of that Act establishes policies for the apportionment of such bridge alteration costs. Public Law 89-670, transferred to the Secretary of Transportation from the Secretary of the Army the responsibility for administration of the Act. Pursuant to this responsibility, the Secretary of Transportation has established implementing procedures based on those previously adopted and utilized by the Chief of Engineers prior to 15 October 1966. This regulation adapts these cost apportionment procedures, found in reference § 277.3(c), to Corps of Engineers planning.

§ 277.6 Basic policies.

(a) The cost apportionment principles of 33 U.S.C. 516, are applicable to the costs of bridge alterations recommended by reporting officers in the interest of navigation during preauthorization planning, including studies conducted under the Continuing Authorities Program (ER 1105-2-50).

(b) The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs. That part of the cost attributable to the requirements of railroad or highway traffic shall also be borne by the bridge owner, to include any expenditure for increased carrying capacity of the bridge, and such proportion of the actual capital cost of the old bridge as the used service life bears to the total estimated service life.

(c) In general, the Federal government's participation in the cost of a bridge alteration shall be limited to providing a functional facility equal in every respect, as near as possible, to the existing facility, while also providing navigational clearances required to meet the anticipated and reasonable needs of navigation.

(d) If the bridge owner or other local interests desire improvements or modifications in the new bridge design for reasons other than that required by the navigation improvement project, the reporting officer may recommend such improvements if such local interests provide necessary assurances to pay the costs apportioned to them.

(e) In the case of small boat harbors and channels, the costs of bridge alterations, strictly for recreation navigation shall be apportioned in accordance with the procedures provided in this regulation. Bridge alteration costs associated with small boat harbors and channels and not apportioned to the bridge owner by the procedures in this regulation, shall be cost shared on the basis of 50 percent Federal and 50 percent non-Federal, the same as the costs of other general navigation facilities.

(f) Reporting officers shall obtain letters of intent from local interests for non-Federal costs apportioned under the provisions of this regulation, in accordance with established procedures for preauthorization feasibility studies. If such letters cannot be obtained from the bridge owner, the reporting officers shall then include in their report a statement that the cost of such alterations shall be borne by the bridge owner or, in the alternative, be apportioned between the bridge owner and the Government as provided under the principles of Section 6

of the Truman-Hobbs Act (33 USC 516).

§ 277.7 Coordination with the U.S. Coast Guard.

In accordance with an agreement signed by the Chief of Engineers on 18 April 1973, (EP 1165-2-2 for a copy of the agreement), reporting officers shall consult with the Coast Guard on contemplated and recommended navigation improvements which involve the consideration of bridge alterations. Determination of navigational requirements for horizontal and vertical clearances of bridges across navigable waters is a responsibility of the Coast Guard. The Chief of Engineers shall coordinate preauthorization feasibility reports, which include recommended bridge alterations, with the Commandant, U.S. Coast Guard.

§ 277.8 Procedures for apportionment of costs.

This paragraph provides the procedures for apportionment of costs of bridge alterations, as established by the U.S. Coast Guard (reference § 277.3(c)) and adapted for use in Corps planning and construction programs. A sample apportionment of the cost of a hypothetical bridge alteration is provided in Appendix B.

(a) *Calculate the total estimated cost of bridge alteration.* The total estimated cost, to be apportioned by these procedures, includes the cost of all necessary appurtenances required to complete the alteration for use by both highway and railway traffic, including engineering, design and inspection.

(b) *Determine the salvage value of bridge to be altered.* The salvage value represents the worth of the materials in the old bridge which may be used for scrap or for other purposes. The value will vary depending on the intended use of the materials.

(c) *Determine direct and special benefits*—(1) *Removing old bridge.* The bridge owner shall pay a share of the removal cost computed as that part of the removal cost that the used service life bears to the total estimated service life. The share of the bridge owner, thus computed, represents an obligation incurred by the owner now by reason of the needs of navigation which otherwise would not have to be met until the bridge had reached the end of its useful life. Accordingly, the present worth of the amount is computed deferred over the unexpired life. The discount rate to be used in the present worth computation is that established by the Water Resources Council, current at the time of the study.

(2) *Fixed charges.* A fixed charge such as engineering, design, and inspection costs, realtor and counsel fees, and the bridge owner's administrative expenses is an undistributed cost, shared in the ratio that each party shares in the cost of construction less fixed charges. In computing the bridge owner's share of the fixed charges, all other financial liabilities assigned to the bridge owner shall be included in the computation.

(3) *Contribution.* If a third party should be involved in a bridge alteration project, such as a party which might benefit from some reasonable modification beyond the needs of navigation and the needs and desires of the bridge owner, that party would be responsible for the incremental costs of such further modification, and such costs would not enter into the apportionment between the bridge owner and the Federal Government.

(4) *Betterments.* Items desired by the bridge owner, but which have no counterpart in the old bridge or are of higher quality than similar items in the old bridge, will be included under this heading. Items considered to fall within this category are listed below. It is intended this list serve as a guide to indicate the types of items that may be considered betterments. The cost of such items will be borne by the bridge owner.

(i) Access roads.

(ii) Concrete or stone finish of embankment slopes instead of seeding.

(iii) Water proofing and skid-resistant epoxy finish of masonry surfaces.

(iv) Steel or concrete spans instead of timber trestle.

(v) Ballasted deck instead of open deck.

(vi) Trainman's walkways and sidewalks.

(vii) Elevators costing more than stairways.

(viii) Materials of greater thickness or heavier weight than supported by design requirements.

(ix) Exotic materials for machinery and operator's house, including tinted and insulated windows.

(x) Heaters and insulation in the machinery house.

(xi) Operator's house furnishings, air-conditioners, water coolers, and medicine cabinets.

(xii) Hydraulic jacks for counterweight support.

(xiii) Fourth coat of paint, and exotic paint systems.

(xiv) Brass pipe and high alloy steel conduits.

(xv) Floodlights and metallic vapor arc lights.

(xvi) Spare parts.

(xvii) Lubricants and lubrication equipment, and tools in excess of minimum requirements.

(d) *Determine expectable savings in repair or maintenance costs.* (1) The provisions of any features that would reduce annual maintenance costs of the altered bridge, such as a wider navigation span eliminating the requirement for protection works, reducing the overall length of the bridge by fill in lieu of a trestle, or replacing two bridges with one bridge, will be included under this heading. The bridge owner should bear the increased annual maintenance cost that will accrue as a result of providing any increased loading and width desired by the bridge owner or attributable to the requirements of railway or highway traffic. Since 33 U.S.C. 516 does not mention bridge operating costs, any increase or decrease in such costs shall not be included in the cost of alteration to be apportioned. The bridge owner's obligation is computed by capitalizing the estimated annual savings at the same rate of interest used in § 277.8(e)(1).

(2) Expectable savings in repair costs is that amount which the bridge owner will not have to pay to restore his bridge, which may be in a damaged condition or may be dilapidated, since the bridge is being altered or removed as a part of the contemplated navigation improvement.

(e) *Estimate costs attributable to requirements of railway and highway traffic.* Items desired by the bridge owner to meet the requirements of railway and highway traffic, but which have no counterpart in the old bridge, will be included under this heading. Items considered to fall within this category are listed below. This list does not contain all such items, but it is intended to serve as a guide in determining which items might fall within this category.

(1) Increased navigational clearances for the benefit of land traffic.

(2) Wider roadbed.

(3) Additional traffic lanes or track.

(4) Medians and wider traffic lanes.

(5) Increased train clearances and spacing of tracks.

(6) Larger cross and bridge ties.

(7) New and heavier rail and expansion joint devices.

(8) Additional signaling and communications systems.

(9) Additional right-of-way.

(f) *Estimate expenditure for increased carrying capacity.* The bridge owner is required to pay the difference in cost between a bridge meeting the navigation clearance requirements with the same live loading capacity as the old bridge and new or altered bridge having any increased live loading capacity desired. The cost of increased live loading capacity will be based on the estimated cost of the new or altered bridge with unit prices applied to the quantity of materials estimated for a hypothetical bridge with the same live loading as the old bridge, but with the increased clearances required by the navigation improvement. The live loading of the new or altered bridge should be compared with the live loading of the old bridge, based on normal working stresses without overstress, overload, or reduction of safety factor.

(g) *Determine value of expired service life of old bridge.* (1) Section 6 of the Act provides, among other things, that the bridge owner shall bear such proportion of the actual capital cost of the old bridge or such part of the old bridge as may be altered or rebuilt, as the used service life of the whole or a part bears to the total estimated service life of the whole or such part.

Guide service life figures have been obtained from retirement curves based on mortality statistics, which represent an attempt to consider economic causes of retirement in addition to physical causes.

(2) For railroad bridges service life, figures of 100 years for substructure, 70 years for superstructure, 37 years for treated timber, 35 years for automatic signals, 20 years for main rail, 30 years for siding rail, and 20 years for crossties and bridge ties are considered to be reasonable and will be used in computing the bridge owner's liability. The service life of the operator's house and machinery house, including machinery, is considered to expire with the removal of the superstructure. For timber structures which have been in existence for more than 50 percent of their estimated service life, the expired service life is held usually at 50 percent providing the structure has been adequately maintained and is in a good state of repair.

(3) The service life of highway bridges, except for certain long span bridges, is usually limited by obsolescence as well as structural deficiency and deterioration. Obsolescence may be due to insufficent capacity for heavier loads and greater volume of traffic than the bridge was originally designed for, safety requirements, and location. Superstructures and pile bents are considered to have a service life of 50 years. Masonry substructure which could be reused in the renovation of a bridge is considered to have a service life of 100 years.

(4) The foregoing service life figures are not to be used arbitrarily, but as a basis for a fair judgment of the service life considering all other factors that pertain in any particular case.

Appendix A—Sec. 6, Pub. L. 647, as Amended (33 U.S.C. 516)

At the time the Secretary* shall authorize the bridge owner to proceed with the project, as provided in Section 515 of this title, and after an opportunity to the bridge owner to be heard thereon, the Secretary shall determine and issue an order specifying the proportionate shares of the total cost of the project to be borne by the United States and by the bridge owner. Such apportionment shall be made on the following basis: The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs; and that part of the cost attributable to the requirements of traffic by railroad or highway, or both, including any expenditure for increased carrying capacity of the bridge, and including such proportion of the actual capital cost of the old bridge or of such part of the old bridge as may be altered or changed or rebuilt, as the used service life of the whole or a part, as the case may be, bears to the total estimated service life of the whole or such part. Provided, that in the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition precedent to the making of an order for such alteration or relocation. The United States shall bear the balance of the costs, including that part attributable to the necessities of navigation: and provided further, that where the bridge owner proceeds with the alteration on a successive partial bid basis the Secretary is authorized to issue an order of apportionment of cost for the entire alteration based on the accepted bid for the first part of the alteration and an estimate of cost for the remainder of the work. The Secretary is authorized to revise the order of apportionment of cost, to the extent he deems reasonable and proper to meet any changed conditions. (June 21, 1940, ch. 409, Section 6, 54 Stat. 499; July 16, 1952, ch. 889, Section 2, 66 Stat. 733; Aug. 14, 1958, Public Law 85-640, Section 1(c), 72 Stat. 595.)

*Secretary of Transportation.

Appendix B—Hypothetical Example of Cost Apportionment

Following is the interpretation of the principles as applied to the alteration of a hypothetical highway—railroad bridge across Blank River between City A and City B.

		Reference table
1. Total estimated cost of alteration project.	$10,917,300	A

The existing double deck swing span will be replaced with a new double deck lift span

affording a horizontal navigation opening of 250 feet clear width between piers normal to the navigation channel and a vertical clearance of 125 feet above mean high water in the raised position.

2. Salvage $77,300

This value is deducted from the original cost to determine the actual capital cost (Table VII). It is also deducted from the Total Estimated Cost of Alteration Project to determine the cost to be apportioned.

3. Direct and special benefits:

a. Removing old bridge (owner's share).	$165,489	I
b. Fixed charges (owner's share).	284,460	II

A fixed charge such as engineering, design and inspection costs, realtor's and counsel's fees, and bridge owner's administrative expenses is an undistributed cost shared in the ratio that each party shares the cost of construction less fixed charges. In computing the bridge owner's share of the fixed charges, all other financial liabilities assigned to the bridge owner shall be included in the computation. (Table II).

c. Contribution by third party $432,000

Section 6 of the Act provides that in the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition precedent to the making of an order for such alteration or relocation. In the instant case, testimony at the hearing developed that the bridge would require alteration because of the navigation project but also City A desires to relieve traffic on a nearby secondary road by providing access to the new bridge. It is considered that as an equitable contribution, City A should contribute an amount equal to one half of the expectable road user benefit accruing over the next 10 years. Other methods for determining the third party's contribution are acceptable depending on the circumstances.

d. Betterments	$18,360	III
4. Expectable savings in repair or maintenance costs.		IV
Repair	$100,000	
Maintenance	16,288	

The new bridge is designed for increased loading and width greater than that of the old bridge. Therefore, the estimated annual maintenance cost was based on a hypothetical bridge designed, but not constructed, for the same loading and width as the old bridge but with increased clearances as required to meet the needs of waterborne navigation, and not on the estimated annual maintenance cost of the new bridge. The savings in repair costs represents a savings to the bridge owner who will not have to restore the bridge that was recently damaged since it is being altered as a part of a proposed navigation improvement.

5. Costs attributable to requirements of railway and highway traffic. $1,534,000 V

The old bridge carries a highway deck on the upper level consisting of a roadway 18 feet wide (no sidewalks) and a railway deck on the lower level with 110-lb. rails. The new bridge will carry a highway deck on the upper level consisting of one 28-foot roadway and two 5-foot sidewalks, and the railway deck will have new 130-lb. rails. In addition, the railway deck will be paved to carry highway traffic. Thus, the bridge may be kept in an intermediate raised position when not being used by railway traffic to pass small-boat traffic without delaying highway traffic. City A also desires to provide additional highway approaches and right-of-way to connect a nearby secondary road with the new bridge.

6. Expenditure for increased carrying capacity. $2,330,000 VI

The highway deck of the old bridge was designed for a live loading equivalent to AASHO H15-44 and the railway deck for live loading of Cooper E 45. The highway deck of the new bridge will be designed for live loading AASHO HS20-44, and the railway deck will be designed for live loading of Cooper E 60. Accordingly, the bridge owner will pay the additional cost for the increased carrying capacity of the new bridge.

7. Expired service life of old bridge. $511,300 VII

The structure of the old bridge was completed in 1908 and the superstructure completed in 1909. For this hypothetical example it was assumed the bridge would be replaced in 1970.

8. The following is an explanation of the procedure for determining the tabulation of proportionate shares of costs to be borne by

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the United States and the bridge owner presented in Table B.

(1) Cost of alteration to be apportioned is the total estimated cost of the project (excluding contingencies) less salvage value (§ 277.8(b)), less contribution by third party, if applicable (§ 277.8c(3)).

(2) Share to be borne by the bridge owner is the sum of the direct and special benefits (§ 277.8(c)) expectable savings in repair or maintenane costs (paragraph 8d), costs attributable to requirements of railway and highway traffic (§ 277.8(e)), expenditure for increased carrying capacity (§ 277.8(f)) and expired service life of old bridge (§ 277.8(g))

(3) Share to be borne by the United States is the difference between the cost of alteration to be apportioned and the share to be borne by the bridge owner.

(4) The exact amount of costs to be borne by the bridge owner will be determined upon completion of the project.

(5) Contingencies may be included in the total shares to be borne by both the United States and the bridge owner.

TABLES

A. Summary of Estimated Project Costs.
B. Tabulation of Proportionate Shares of Cost To Be Borne by the United States and the Bridge Owner.
I. Bridge Owner's Share of Removing Old Bridge.
II. Fixed Charges To Be Paid by Bridge Owner.
III. Betterments.
IV. Expectable Savings in Repair or Maintenance Costs.
V. Costs Attributable to Requirements of Railway and Highway Traffic.
VI. Expenditure for Increased Carrying Capacity.
VII. Value of Expired Service Life of Old Bridge.

TABLE A—SUMMARY OF ESTIMATED PROJECT COSTS

No. and item	Cost	Fixed charges	Total
1 New bridge	$8,104,052	$570,000	$8,674,052
2 Removal of old bridge	521,908	500	522,408
3 Approaches	50,000	5,000	55,000
4 Additional highway approaches	1,530,000	15,000	1,545,000
5 Railroad force account work	41,800	3,500	45,300
6 Additional signaling	27,000	2,400	29,400
7 Right-of-way	13,240	900	14,140
8 Additional right-of-way	30,900	1,100	32,000
Total	10,318,900	598,400	10,917,300
Total estimated cost of project			10,917,300
Less salvage			−77,300
Less contribution by third party			−432,000
Total cost of alteration to be apportioned			10,408,000
Less right-of-way (items 7 and 8)			−46,140
Total Cost of construction			10,361,860

TABLE B—TABULATION OF PROPORTIONATE SHARES OF COSTS TO BE BORNE BY THE UNITED STATES AND THE BRIDGE OWNER

Total estimated cost of project (excluding contingencies) (table A)		$10,917,300
Less salvage		77,300
Less contribution by third party		
Total cost of alteration to be apportioned		10,408,000
Share to be borne by the bridge owner:		
Direct and special benefits:		
Removing old bridge	$165,489	
Fixed charges	284,460	
Betterments	18,360	
Expectable savings in repair or maintenance costs:		
a. Repair	100,000	
b. Maintenance	16,286	
Costs attributable to requirements of railway and highway traffic	1,534,000	
Expenditure for increased carrying capacity	2,330,000	
Expired service life of old bridge	511,300	

TABLE B—TABULATION OF PROPORTIONATE SHARES OF COSTS TO BE BORNE BY THE UNITED STATES AND THE BRIDGE OWNER—Continued

Total	4,959,897
Share to be borne by the United States	5,449,103
Contingencies 15 pct	817,365
Total	6,266,468
Share to be borne by the bridge owner	4,959,897
Contingencies 15 pct	743,985
Total	5,703,882

NOTE: The exact amount to be borne by the bridge owner will be determined after completion of the project.

TABLE 1—BRIDGE OWNER'S SHARE OF REMOVING OLD BRIDGE

Item to be removed	Age at time of removal (years)—(1)	Owner's share percent—(2)	Removal cost—(3)	Owner's share of removal—(4)	Years remaining—(5)	Present worth factor—(6)	Owner's present liability—(7)
Substructure	62	62	$241,935	$150,000	38	.1639	$24,585
Protection Works	37	67	60,000	40,200	18	.4245	17,065
Superstructure	61	87	206,896	180,000	9	.6516	117,288
Signaling	61	100	440	440	0	1.0	440
Ties and Timber	20	67	6,000	4,000	10	.6213	2,485
Rail and Accessories:							
Rail, 110 lb	33	100	1,000	1,000	0	1.0	1,000
Rail, 110 lb	13	65	5,637	3,664			2,626
Total			521,908	388,104			165,489

Present Worth Factor based on 4⅞%, FY 1970, as established by Water Resources Council. The actual factor to be used shall be that current at the time of alteration.

TABLE II—FIXED CHARGES TO BE PAID BY BRIDGE OWNER

Cost of construction	$10,361,860
Less fixed charges	598,400
Total	9,763,460
Owner's share less fixed charges:	
Removing old bridge	165,489
Betterments	18,360
Expectable savings in repair or maintenance costs:	
a. Repair	100,000
b. Maintenance	16,288
Costs attributable to requirements of railway and highway traffic (less right-of-way)	1,503,100
Expenditure for increased carrying capacity	2,330,000
Expired service life of old bridge	511,300
Total	4,644,537
Fixed charges by owner	284,460

$$\frac{4,644,537 \times 598,400}{9,763,460} = 284,460$$

TABLE III—BETTERMENTS

New furniture and water cooler in control house	$1,050
Increased cost of elevators over stairways	13,360

TABLE III—BETTERMENTS—Continued

Increased cost of galvanized steel grating walkways over timber walkways	3,950
Total	18,360

TABLE IV—EXPECTABLE SAVINGS IN REPAIR OR MAINTENANCE COSTS

Repair Cost	
Cost in 1970 to repair damaged bridge	$100,000
Savings in repair costs	100,000
Maintenance Cost	
Average annual maintenance cost for old bridge	16,875
Estimated annual maintenance cost for new bridge	16,000
Total decrease in annual maintenance costs	875
Annual savings capitalized (50 years) @ 4⅞%:875÷0.05372	16,288

Present worth factor based on 4⅞ pct., F.Y. 1970, as established by Water Resources Council. The actual factor to be used shall be that current at the time of the study.

TABLE V—COSTS ATTRIBUTABLE TO REQUIREMENTS OF RAILWAY AND HIGHWAY TRAFFIC

Heavier running rail (130 lb in lieu of 110 lb)	$11,200
Paving, lower deck	34,900
Additional signaling	27,000
Additional highway approaches	1,430,000
Subtotal	1,503,100
Additional right-of-way	30,900
Total	1,534,000

TABLE VI—EXPENDITURE FOR INCREASED CARRYING CAPACITY

Cost of new bridge designed for Cooper E 60 and AASHO HS20-44 loading [1]	$8,609,592
Cost of replacement-in-kind (hypothetical) bridge designed for Cooper E 45 and AASHO H15-44 loading [1]	6,279,592
Total	2,330,000

[1]Excludes all items in Table III and first two items in Table V.

TABLE VII—VALUE OF EXPIRED SERVICE LIFE OF OLD BRIDGE

[Replacement year—1970]

Item to be removed	Year built—(1)	Original cost—(2)	Salvage value—(3)	Actual capital cost (2)-(3)—(4)	Estimated service life—(5)	Expired service life		Value of expired service life (4)×(7)—(8)
						Years 1970-(1)—(6)	Percent of total (6)(5)—(7)	
Substructure:								
Pivot Pier	1908	$34,500	$0	$34,500	100	62	62	$21,390
Right End Pier	1908	18,580	0	18,580	100	62	62	11,520
Left End Pier	1908	21,410	0	21,410	100	62	62	13,274
Right Abutment	1908	8,600	0	8,600	100	62	62	5,332
Left Abutment	1908	11,410	0	11,410	100	62	62	7,074
Protection Works:								
Pivot Pier	1909	5,800	0	5,800	37	61	[1]50	2,900
Right End Pier	1942	3,200	0	3,200	37	28	[1]50	1,600
Superstructure:								
Swing Span	1909	168,920	19,400	149,520	70	61	87	130,082
Electrification	1957	5,000	500	4,500	22	13	59	2,655
Left Approach Spans	1909	142,017	16,300	125,717	70	61	87	109,374
Right Approach Spans	1909	156,692	19,300	137,392	70	61	87	119,531
Signaling	1909	15,000	1,000	14,000	35	61	100	14,000
Ties and Timber	1909	8,120	0	8,120	20	61	[1]50	4,060

TABLE VII—VALUE OF EXPIRED SERVICE LIFE OF OLD BRIDGE—Continued

[Replacement year—1970]

Item to be removed	Year built—(1)	Original cost—(2)	Salvage value—(3)	Actual capital cost (2)–(3)—(4)	Estimated service life—(5)	Expired service life		Value of expired service life (4)×(7)—(8)
						Years 1970–(1)—(6)	Percent of total (6)(5)—(7)	
Rail and Accessories:								
Rail, 110 lb	1937	6,600	2,200	4,400	20	33	100	4,400
Rail, 110 lb	1957	43,679	18,600	25,079	20	13	65	16,301
Roadway Approaches: [2]								
Pavement	1908	17,841	0	17,841	20	62	[1]50	8,921
New Lane	1961	43,609	0	43,609	20	9	45	19,624
Subtotal			77,300	633,678				492,038
Engineering		24,695	0	24,695			[3]78	19,262
Total			77,300					511.300

[1]Held at 50% if maintained in good condition.
[2]Roadway approaches to be abandoned.
[3]Weighted average 100 ×492, 038/633, 678=78%.

Explanation of Columns for Table VII:

Column (1): Year Built is the original date that an item to be removed became a part of the bridge or the last known date that it was replaced. The items to be removed should be broken down to show as much detail as possible, particularly where there is a variation in the year built and/or the estimated service life.

Column (2): Original cost shall be supported by records furnished by bridge owner. Engineering cost should be estimated if unknown.

Column (3): Salvage—refer to § 277.8(b).

Column (4): Actual capital cost is the original cost of the item to be removed minus the salvage value.

Column (5): Estimated Service Life—refer to § 277.8(g).

Column (6) & (7): Expired Service Life—refer to § 277.8(g).

Column (8): Value of expired service life is the actual capital cost of the item to be removed multiplied by the percent of expired service life.

PART 278—[RESERVED]

PART 279—RESOURCE USE: ESTABLISHMENT OF OBJECTIVES

Sec.

279.1 Purpose.
279.2 Applicability.
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279.7 Information collection and preliminary analysis.
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APPENDIX A—SAMPLE RESOURCE USE OBJECTIVES

AUTHORITY: Pub. L. 89-72, Federal Water Project Recreation Act, 79 Stat. 213 et seq.

SOURCE: 43 FR 14014, April 4, 1978, unless otherwise noted.

§ 279.1 Purpose.

This regulation provides policy and guidance for establishing resource use objectives for all Civil Works water resource projects during Phase I/Phase II post-authorization studies and re-evaluation of completed projects.

§ 279.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 279.3 References.

(a) Pub. L. 89-72, "Federal Water Project Recreation Act," July 9, 1965 (79 Stat. 213 et seq.).

(b) ER 1105-2-200, Multiobjective Planning Framework (33 CFR Part 290).

§ 279.4 Definitions.

For the purposes of this regulation:

(a) "Resource use objectives" are clearly written statements, specific to a given project, which specify the attainable options for resource use as determined from study and analysis of resource capabilities and public needs (opportunities and problems).

(b) "Natural resources" are those elements, features, conditions, etc., of land and water that can be character-

ized as physiographic, biological and/or aesthetic.

(c) "Public benefits" are the tangible and intangible gains to society directly attributable to a water resource project that satisfy the expressed or observed needs of the public (i.e., individuals, groups, organizations and local, county, state and federal governmental agencies).

(d) "Boundary plans" are Division/District wide maps clearly delineating the limits of each regional recreation market area for one or more Civil Works water resource projects.

§ 279.5 Policy.

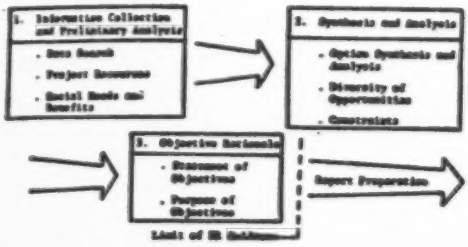
(a) It is the policy of the Chief of Engineers that all water resource projects administered by the Corps will have established a set of resource use objectives. These objectives will be based upon the expressed preferences of the residents of the region served (social option) and will be in keeping with the capabilities of the natural and man-made resources of the specific project (resource option). A regional analysis is required to tailor each project to serve expressed preferences within its resource capabilities and consistent with Federal laws and administrative cost-sharing policy. Preparation of regional studies and establishment of these objectives will utilize an interdisciplinary team with leadership by planning, and participation from engineering, design, real estate, and operations elements. Each project will emphasize those specific resource use objectives determined, through public participation, to achieve the greatest overall public benefit. Subsequent aspects of planning, development, and management for the specific project will be directed to achieving the approved resource use objectives.

(b) The implementation of this policy requires that the public be fully involved in the regional studies and development of resource use objectives and management plans for each specific water resource project, including at least one public meeting. The establishment of resource use objective may be addressed at a general public meeting held for the project if adequate discussion can be achieved. If not, the district engineer should conduct a separate meeting for this purpose.

§ 279.6 Overview of objective setting process.

The process of determining resource use objectives flows through three overlapping steps and considers three main sets of data. Figure 1 presents an overview of this process.

FIGURE 1. OVERVIEW OF RESOURCE USE OBJECTIVE PROCESS



§ 279.7 Information collection and preliminary analysis.

(a) *Data search.* This effort consists of collecting existing data and accomplishing the minimum additional studies necessary to obtain the information required to generate and analyze the likely options. State and local agency input should be sought during this phase. The initial work will be to determine separately the options for resource use and public needs. A preliminary analysis comparing the two parts and their relationship to authorized project purposes and administrative constraints should be conducted prior to further public and agency input.

(b) *Project resources.* The natural and man-made resources of the project area are to be identified and the interrelationships analyzed to generate the options that are most viable to the overall region. The environmental information and analysis, among other things, should define and describe the physical limitations of the project, aquatic and terrestrial vegetation, game and non-game wildlife species and distribution, fisheries, terrain, soils, minerals, climate, capacity and sensitivity of these resources to public

use, archaeological and historical resources, management techniques, and ecosystem interactions.

(c) *Social needs and benefits.* The problems, opportunities, and desires of the people of the region to be served by the project must be identified in order to determine options that are in the best overall public interest. The basic approach for determining public needs and benefits is through a market analysis and a public involvement program. In considering options, the analysis as a minimum should include the indentification of the various publics served, views of other agencies and organizations, existing and planned recreational facilities in the market area of the consumer, the population base and distribution, institutional analysis of potential cost-sharing partners, constraints, the transportation network, the needs identified by local, State and Federal agencies, and the State Comprehensive Outdoor Recreation Plan (SCORP).

§ 279.8 Synthesis and analysis.

(a) *Option, synthesis and analysis.* The project resources and market area information should be aggregated and analyzed to determine what trade-offs can be made among the possible options to establish objectives that can meet the highest and best use of the natural and man-made resources, efficiently meet the needs of the public to be served, and be of lasting value to the region and the nation as a whole. The options determined in the first step should be synthesized to combine the separate elements. Compatible options in the two parts would result in rational resource use objectives. Conflicting options require trade-off analysis to determine to what extent compromise can be made, or if any compromise is possible to achieve acceptable objectives. In both cases the impacts, beneficial and adverse, of implementing the compatible or compromise objective(s) should be stated. For example, the preservation of wildlife habitat could limit the development of high intensity recreational facilities in a physically suitable area, resulting in a lower attainment of tangible recreation benefits. However, preservation of the existing habitat would produce intangible benefits to society by enhancing a species otherwise likely to be lost to the area.

(b) *Diversity of opportunities.* In regions where there are a number of Corps projects, this analysis must consider the larger regional context of interrelationships which will result in a diversity of opportunities available and emphasize the particular qualities of each project. For example, one project may emphasize swimming, another project weekend camping and power boating, while still another project may provide fishing and passive recreation use such as hiking trails, nature, and ecological study areas.

(c) *Constraints.* In addition to constraints imposed by the authorizing legislation, other project purposes and resource capabilities, the resource use objectives must be consistent and compatible with State and Regional planning activities and programs. As an example, Corps management actions to achieve resource use objectives must be compatible with the State approved Best Management Practices (BMP) for waste treatment (and non-point sources of pollution) as prescribed by section 208, Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), as amended.

§ 279.9 Objective rationale.

(a) *Statement of objectives.* The last step in this process is the summarization of the preceding work by clearly stating the objective(s) and providing the rationale, impact, and basic management measures for their accomplishment. The logic, trade-offs, and judgments made in the process should be presented in a concise and readable manner. The impacts, both beneficial and adverse, that will result from attaining objectives selected must be presented. General implementation measures (e.g., campground development, use of fish attractors, limiting use in environmentally sensitive areas, lake fluctuation control, etc.) should be stated as a guide for the preparation of detailed development plans and management actions to achieve the objectives.

(b) *Purpose of objectives.* The resource use objectives for each project will guide the design, development and management of the resource base to obtain the greatest possible benefit through meeting the needs of the public and to protect and enhance environmental quality. The resource use objectives should be reflected in reports and plans relating to a study or restudy of water resource projects. Management actions on existing projects, including leasing and licensing, will also be directed towards the attainment of the approved resource use objectives.

§ 279.10 Implementation.

(a) Resource use objectives through development and management programs will be incorporated into Phase I, and Phase II General Design Memoranda and Master Plans for authorized and completed water resource projects (report requirements depend on AE&D status of project). The establishment of resource use objectives for projects formulated under the Part 290 of this chapter planning process should not require a great deal of additional effort to bring them in compliance with this regulation. However, more effort may be required for completed projects with existing use patterns and constructed facilities.

(b) Regional studies are prerequisite to effective project planning for establishment of resource use objectives. Division engineers are responsible for issuing criteria and instructions, for use by district engineers, on establishing regional boundaries, conduct of regional studies and content and format of report requirements. As a minimum, one criteria to consider is that a regional boundary could be formed by double the estimated distance from the centroids of population located within the market area of any operating project. Regional boundaries need not be restricted either to States or to District hydrologic boundaries. In those cases where a region may cross District boundaries, division engineers will establish administrative responsibility. District engineers are responsible for preparation of districtwide regional boundary plans, scheduling of study efforts, and report preparation. Boundary plans, study schedules and reports shall be submitted for approval in accordance with instructions issued by the division engineer. Four copies of the approved regional boundary plan and regional study report will be furnished to HQDA (DAEN-CWP-P), WASH DC 20314 for comment, in accordance with procedures given in ER 1110-2-1150. Investigations and report preparation for regional studies may be accomplished with funds from Operation and Maintenance General appropriations programmed for preparation of individual project Master Plans. Through implementation of the regional analysis approach, it is expected that an overall savings in individual Master Plan preparation can be realized. In any event, it is not expected that the overall program cost will increase.

(c) District engineers will incorporate the establishment of resource use objectives into the on-going Master Plan preparation process. Those Master Plans currently being prepared or updated and not substantially completed should be modified to reflect this policy. Those projects with high quality resources and/or conflicts between use and current resource management should be given a high priority so that redirection of facility development and management programs can be implemented as soon as possible.

§ 279.11 Responsibilities.

Division engineers will review the Districts Master Plan priority schedule and monitor regional studies and Master Plan preparation to insure timely compliance on development of resource use objectives. Future budget submissions and expenditures of construction and operation and maintenance funds will be reviewed by division engineers as to their relationship to the approved resource use objectives and management implementation. Questions and requests for technical assistance concerning implementation of the concept and guidance set forth in this regulation may be directed to HQDA (DAEN-CWP-P) WASH DC 20314 or DAEN-CWO-R.

Appendix A—Sample Resource Use Objectives

This appendix presents some example resource use objectives that might be derived for a water resource project. They are presented for illustrative purposes only and are not intended to represent any specific project or the full range of objectives that could be developed.

The following sample resource use objectives reflect what could result from a detailed analysis and evaluation of the resources on the project, the resources and opportunity in the general region, and the needs of the public. Each objective has a brief discussion on why that particular objective would be selected.

Resource use objective: To provide high quality swimming opportunity with a variety of high density day-use which include picnicking, beaches, play fields, tot lots, open space, walks, and non-power boating.

(Discussion) The analysis of regional and site specific factors indicates that this project with its small water surface and excellent water quality is not suitable for power boating; is in a suburban area with housing developments already adjacent to the project boundaries or presently planned; the natural resources have already been extensively disturbed; the soil conditions would be susceptive to extensive landscaping and could withstand high levels of public use; the water quality and waterland form characteristics are ideal for swimming and wading; there is currently a deficiency in available lake swimming, open space and day use activity facilities in the going market area; and there exists a non-Federal government agency to assist in carrying out this objective.

Resource use objective: To establish and maintain a high quality warm water fishery which would support an initial use of 70,000 fishermen recreation days.

(Discussion) The analysis of pertinent factors indicates that there exists a high demand for warm water fishing; that the water quality and other necessary environmental factors are present which would support a warm water fishery; that modified reservoir clearing, water level management and provision for fish shelters would provide necessary inputs for improved fish production; that some zoning on boat usage in certain embayments will decrease the conflicts between fishing and boating; and that current state fishery programs will provide assistance and the necessary technical advice.

Resource use objective: To establish an ecological study area at Wakulla Wash for the protection and study of its unique vegetative associations.

(Discussion) The analysis of pertinent factors indicates that high intensity recreation use demand can be satisfied at other areas on the project; the soil in the wash would be highly susceptible to erosion if the vegetation were removed; soil compaction would cause loss of ground cover; trails can be designed to avoid drainage and erosion problems; unique associations of vegetation exist in the wash; the nearest vehicle access point is one mile from the site; during public meetings local environmental groups have expressed an interest to preserve the area for educational purposes; there is a large population base within two hours drive of the project; two local universities have volunteered to administer the area in conjunction with their environmental course work and related work; and the County is zoning the adjacent land to protect the watershed of the Wash.

Resource use objective: To provide overnight use to accommodate transient cross-county travelers.

(Discussion) The analysis of regional and site factors indicate that this project with its small water surface and lack of scenic qualities does not experience much local use. A heavily traveled Interstate Highway with an interchange is within a quarter mile of the project boundary. The location of this project is such that it is within a days travel from major recreation areas; the soil conditions are suitable for high density public use and there is a deficiency of transient camping along this portion of the Interstate.

Resource use objective: To provide a high quality diversified recreation opportunity that would satisfy requirements for destination or vacation type activities.

(Discussion) The analysis of regional and site factors indicate that this project with its outstanding scenic qualities and its location, is suitable for destination or vacation type recreation activities. Private interest have expressed desires to provide sophisticated lodging and camping facilities together with other recreation development to provide for a diversity of recreation activities.

Resource use objective: To establish a cultural interpretive area for the protection, study and viewing of its unique archeological (historical) resource.

(Discussion) The analysis of pertinent factors indicates that high intensity recreation use demand can be satisfied at other areas on the project. The archeological (historical) site is one of the few sites that has not been destroyed over the years. The local archeological (historical) society has expressed an interest during public meeting in preserving and interpreting the site as part of their society program.

PART 282—WATER RESOURCE POLICIES AND AUTHORITIES: FEDERAL PARTICIPATION IN SHORE, HURRICANE, TIDAL AND LAKE FLOOD PROTECTION

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APPENDIX A—COMPUTATION OF FEDERAL COSTS FOR SHORE PROTECTION PLANS
APPENDIX B—EXAMPLE COMPUTATIONS FOR COST SHARING ON SHORE PROTECTION PLANS

AUTHORITY: Pub. L. 84-826, 70 Stat. 702 (33 U.S.C. 426e-426h).

SOURCE: 44 FR 4594, Jan. 22, 1979, unless otherwise noted.

§ 282.1 Purpose.

This regulation provides policies and guidelines for determining the extent of Federal participation in potential Federal projects for shore erosion control, and hurricane, abnormal tidal and lake flood protection.

§ 282.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities. The policies and guidelines set forth in this regulation are applicable to all preconstruction studies (level C and Phase I GDM) including small project studies conducted under the authority of section 103, Pub. L. 87-874.

§ 282.3 References.

(a) Section 2, Pub. L. 71-520, 3 July 1930, as amended by section 103, Pub. L. 86-645, 14 July 1960.
(b) Pub. L. 79-727, 13 August 1946, as amended.
(c) Pub. L. 84-71, 15 June 1955.
(d) Pub. L. 84-826, 28 July 1956, as amended.
(e) Pub. L. 86-645, 14 July 1960.
(f) Pub. L. 87-874, 23 October 1962.
(g) Pub. L. 88-172, 7 November 1963.
(h) Pub. L. 88-352, 2 July 1968.
(i) Pub. L. 90-483, 13 August 1968.
(j) Pub. L. 91-611, 31 December 1970.
(k) Pub. L. 91-646, 2 January 1971.
(l) Pub. L. 93-251, 7 March 1974.
(m) Executive Order 11988, Floodplain Management, 24 March 1977.
(n) Executive Order 11990, Protection of Wetlands, 24 March 1977.
(o) ER 1105-2-50 (33 CFR 263).
(p) ER 1105-2-200 (33 CFR 290).
(q) ER 1165-2-18 (33 CFR 209.345).
(r) EM 1160-2-101.

§ 282.4 Definitions.

As used in these regulations:
(a) "Construction costs." The project first costs associated with initial construction or periodic nourishment (§ 282.7(d)) less the cost of the lands, easements, rights-of-way and relocations, but including engineering and design and supervision and administration (E&D and S&A).
(b) "Historical shoreline." The most seaward position of the mean high water/mean higher high water position recorded by previous surveys or interpreted from previous photographs, other historical records, or other sufficiently reliable sources to permit comparison with the present position.
(c) "Hurricane and abnormal tidal flooding." Inundation from *abnormal* rises in water levels due to hurricanes, storms and tsunami waves.
(d) "Lake flooding." Storm-induced inundation superimposed on the ordinary fluctuations of the lake level.
(e) "Periodic nourishment." Placement of sand fill at intervals of time to replenish a beach erosion control project which is eligible for Federal participation as deferred construction. (§ 282.7(d)).
(f) "Investment costs." The total costs of intitially constructing a project including E&D and S&A, interest during construction, and the costs of lands, easements, rights-of-way, and relocations. Interest during construction is not included when benefits accrue as the project is constructed or when project construction is two years or less.

(g) "Public use." Available for use by any and all of the general public on equal terms.

(h) "Publicly owned." Ownership by a State, municipality, or other political subdivision. Federal ownership is not included within this definition.

(i) "Shore restoration and protection." Works provided to restore the shore and prevent or reduce damages caused by erosion. The terms "beach erosion control" and "shore restoration and protection" are used interchangeably. Protection of bluffs and dunes as well as beaches is included.

(j) "Public benefits." Benefits resulting from public recreational use and the prevention of damage to publicly-owned facilities such as highways, buildings, parks, boardwalks, etc.

§ 282.5 Synopsis of program legislation.

(a) *Shore protection.* (1) Section 2 of Pub. L. 71-520 as amended by section 103, Pub. L. 86-645, authorized the Chief of Engineers to conduct shore erosion control studies in cooperation with appropriate agencies of various cities, counties, or States.

(2) Pub. L. 79-727 expanded the Federal role by providing for Federal aid in the construction, but not maintenance, of works for the improvement and protection of publicly-owned shores of the United States.

(3) Pub. L. 84-826, enacted in 1956, further expanded the Federal role by authorizing Federal participation in the cost of works for protection and restoration of the shores of the U.S. including private property if such protection was incidental to the protection of publicly-owned shores or if such protection would result in public benefits. It also provided for Federal assistance for periodic nourishment on the same basis as new construction, for a period to be specified by the Chief of Engineers, when it would be the most suitable and economical remedial measure. Section 156 of Pub. L. 94-587 allows the Secretary of the Army, acting through the Chief of Engineers, to extend that period to 15 years after the date of the initiation of construction if desirable.

(4) Pub. L. 87-874 increased the proportion of construction costs borne by the Federal Government and made the total cost of preauthorization studies a Federal responsiblity. In addition, it provides the Secretary of the Army, acting through the Chief of Engineers, with the authority for planning and constructing small beach erosion control projects within certain limits without specific Congressional authorization. Implementing policies and procedures for this authority may be found in ER 1105-2-50.

(5) Section 111 of Pub. L. 90-483 provides the Secretary of the Army, acting through the Chief of Engineers, the authority to study, construct, and maintain projects for the mitigation of erosion damages attributable to Federal navigation works. Projects for which the Federal cost does not exceed one million dollars do not require specific Congressional authorization. This authority applies to both public and privately-owned shores along the coastal and Great Lakes shorelines. Implementing policies and procedures for this authority may be found in ER 1105-2-50. Section 215 of Pub. L. 90-483 provides authority for the Secretary of the Army acting through the Chief of Engineers, to enter into agreements providing for reimbursement to States or political subdivisions for work to be performed by them at authorized projects. The amount of reimbursement is limited to $1,000,000. Unless specifically authorized by Congress, reimbursement for work commenced by local interests subsequent to 13 August 1969 may be made only in accordance with this authority. Implementing policies and procedures may be found in ER 1165-2-18.

(6) Section 55 of Pub. L. 93-251 authorizes the provision of *technical and engineering assistance* to non-Federal public interests in developing structural and nonstructural methods of preventing damages attributable to beach erosion.

(b) *Hurricane, abnormal tidal and lake flood protection.* The Federal interest in projects to protect against hurricane, abnormal tidal and Great Lakes flood damage is not explicitly defined by legislation. Pub. L. 84-71 enacted 15 June 1955, authorized the Secretary of the Army, in cooperation with the Secretary of Commerce and

other Federal agencies concerned with hurricanes, to make studies of the Atlantic and Gulf coasts of the United States to secure data on the behavior and frequency of hurricanes and to determine means of preventing loss of life and damages to property. It did not specify the degree of Federal cost sharing for construction of protective works. However, in authorizing projects proposed in the first three of these studies, the 1958 Flood Control Act established a precedent of limiting the Federal share of investment cost to a maximum of 70 percent. In June 1978 the President proposed that cost sharing for this type project be modified to require a cash or in-kind contribution equal to 20 percent of the project investment costs.

(c) *Multiple-purpose projects.* Pub. L. 87-874 introduced the multiple purpose concept in shore erosion control studies by providing for surveys of coastal areas of the United States and its possessions, including the shores of the Great Lakes, in the interest of shore erosion control, hurricane protection and related purposes. Generally, costs associated with each purpose are apportioned in accordance with applicable laws and policies. However, section 208 of the Flood Control Act of 1970 provides discretionary authority for a Federal share up to 70 percent of the construction costs for combined hurricane protection and shore erosion control projects.

§ 282.6 Program policies.

(a) *General.* It is the policy of the Corps of Engineers to undertake projects to prevent erosion and flooding of the coastal areas when those projects best serve the public interest. Selection of the plan which best serves the public interest requires the evaluation of a wide range of alternatives. Plans will be developed, evaluated and selected in accordance with the multiobjective planning framework required by ER 1105-2-200. This framework provides that planning be directed to achieve National Economic Development (NED) and Environmental Quality (EQ) as equal national objectives. Using this planning process, the EQ objective is interpreted as being the same as the definition of environmental quality contained in the National Environmental Policy Act of 1969. Thus, plans to achieve the EQ objective shoud address the broadest scope of concerns pertaining to the natural and cultural environment. The degree of Federal participation in the selected plan will be based upon the policies and requirements given in the following paragraphs.

(b) *Geographic applicability.* Shore erosion control, hurricane, and abnormal tidal flooding authorities are applicable to the shores of the Atlantic and Pacific Oceans, the Gulf of Mexico, the Great Lakes, estuaries, and bays directly connected therewith of each of the States, the Commonwealth of Puerto Rico, and the possessions of the United States. Authority for shore erosion control activites extend only the distance up tributary streams where it can be demonstrated that the dominant causes of erosion and damage are ocean tidal action (or Gulf of Mexico and Great Lakes water motion) and wind-generated waves. They will not address erosion at upstream locations caused by streamflows or vessels. Lake flood protection activities are generally limited to the Great Lakes.

(c) *Coastal zone management plans.* Project proposals shall be consistent to the maximum practicable extent, with approved State Coastal Zone Management Programs developed under the authority of the Coastal Zone Management Act of 1972, as amended.

(d) *Beach creation.* Existing shore erosion control authority provides for "restoration" and "protection." It does not provide for Federal cost sharing in extending a beach beyond its historic shoreline unless the extension is needed for engineering reasons to provide protection from erosion.

(e) *Shore categories.* Five general categories of shore, based on ownership and use, and incidence and type of benefits, must be considered in determining Federal aid toward the cost of shore restoration and erosion protection. These categories, and the levels of Federal aid applicable thereto, are listed in Table 1. There are no restrictions regarding shoreline categories for hurricane, tidal, and lake flooding.

TABLE 1—CATEGORIES OF SHORE AND LEVELS OF FEDERAL AID

Shore category [5]	Maximum level of Federal aid	
	Construction	Maintenance
I. Federally owned	100%	100%
II. Publicly owned parks and conservation areas [1]	[6]70%	[2]None
III. Publicly owned other than parks and conservation areas	[6]50%	[2]None
IV. Privately owned, protection will result in public benefits [3 4]	[6 7]50%	[2]None
V. Privately owned, protection will not result in public benefits susceptible of evaluation [4]	None	None

[1]See § 282.9(a)(2) below.
[2]See § 282.7(d) below, concerning periodic beach nourishment.
[3]Privately owned shores under public control, as through a sufficiently long-term lease assuring realization of public benefits throughout the economic life of the project, may be treated as Category III shores in determining Federal aid.
[4]See § 282.9(a)(6) below, concerning incidental protection of privately owned shores.
[5]Indian shores do not usually fall within categories of shore provided. The status of such lands will depend upon the particular treaty provisions pertaining to the lands under consideration and will need to be examined in each instance. Specific cases should be referred to HQDA (DAEN–CWP–E, C or W) WASH DC 20314 for guidance.
[6]Cost-sharing percentages do not apply to lands, easements and rights-of-way.
[7]Multiplied by the ratio of public benefits along Cat. IV shore to total benefits along Cat. IV shore.

(f) *Public use.* Public use is not a condition for Federal participation in hurricane, abnormal tidal or lake flood protection projects, However, current shore erosion control law provides that "Shores other than public (i.e., privately owned) will be eligible for Federal assistance if there is a benefit such as that arising from public use. . . ." In the case of beaches used for recreation, public use means use by all on equal terms. This means that project beaches will not be limited to a segment of the public. Unless the protection of privately-owned beaches is incidental to protection of public beaches (§ 282.9(a)(6)), they must be open to all visitors regardless of origin or home area or provide protection to nearby public property to be eligible for Federal aid. Items affecting public use are discussed below.

(1) *User fees.* A reasonable beach fee, uniformly applied to all, for use in payment of the local share of project costs is allowable. Normal charges made by concessionaires and municipalities for use of facilities such as bridges, parking areas, bathhouses and umbrellas are not construed as a charge for the use of the Federal beach project, if they are commensurate with the value of the service they provide and return only a reasonable profit. Fees for such services must be applied uniformly to all concerned and not as a prerequisite to beach use.

(2) *Parking.* Lack of sufficient parking facilities for the general public (including non-resident users) located reasonably near and accessible to the project beaches may constitute a *de facto* restriction on public access and use of such beaches, thereby precluding eligibility for Federal assistance. Generally, parking on free or reasonable terms should be available within a reasonable walking distance of the beach. Street parking is not considered acceptable in lieu of parking lots unless curbside capacity will accommodate existing and new demands. Parking should be sufficient to accommodate the lesser of the peak hour demand or the beach capacity. In some instances State and local plans may call for a reduction in automobile pollutants by encouraging public transportation. Thus, public transportation facilities may substitute for or complement parking facilities. However, reports which consider public transportation in this manner must indicate how the public transportation system would be adequate for the needs of projected beach users. In computing the public parking accommodations required, the beach users not requiring parking should be deducted from the design figure.

(3) *Access.* Reasonable public access must be provided in accordance with

the recreational use objectives of the particular area.

(4) *Beach use by private organizations.* Federal aid to private shores owned by beach clubs and hotels is incompatible with the intent of Pub. L. 34-826 if the beaches are limited to use by members or paying guests.

(5) *Public shores with limitations.* Publicly-owned beaches which are limited to use by residents of the community or a group of communities are not considered to be open to the general public and will be treated as private beaches (Category V, Table 1).

(g) *Improvements for recreation.* Improvements to enhance the recreational value of shore erosion control projects such as bathhouses, access roads, toilet facilities and parking areas are a local responsibility. Provision of those facilities is not eligible for Federal aid through the Corps of Engineers programs. Costs for those facilities are considered self-liquidating and should not be included as project costs.

§ 282.7 Federal role in project development.

(a) *Preauthorization Studies.* The Corps of Engineers may undertake specific studies relating to shore erosion and hurricane, abnormal tidal and lake flood problems with the authorization of Congress, either in response to resolutions adopted by the Committee on Environment and Public Works of the United States Senate or the Committee on Public Works and Transportation of the House of Representatives, or by an Act of Congress. Studies for small projects may be initiated without specific Congressional authorization under the authority of section 103 of Pub. L. 87-874 and section 111 of Pub. L. 90-483. Studies are 100 percent Federally funded.

(b) *Construction.* Construction of authorized projects is a responsibility of the Corps of Engineers. However, local interests may construct portions of projects, after they are authorized by Congress, and be reimbursed by the Federal Government within a one million dollar limitation if prior approval is obtained from the Chief of Engineers (reference ER 1165-2-18 for approval of procedures and policies). If local interests desire to proceed with construction of the project, they may do so with the understanding that:

(1) Federal participation would be limited to the Federal shares of the costs of the elements constructed which are in accordance with the authorized plan,

(2) Reimbursement will be subject to future appropriation of funds applicable to the project and shall not take precedence over other pending projects of higher priority, and

(3) Local interests provide assurances that they will bear any increased costs of measures which may result from advance work, unless there are extenuating circumstances which warrant omission of this condition.

(c) *Maintenance.* Maintenance is generally a non-Federal responsibility. However, if a portion of the benefited area is in Federal ownership the Federal maintenance responsibility shall be established as the same portion as the length of Federal shoreline is to the length of total shoreline. In the case of multipurpose projects providing for navigation, particularly those which involve complex operating procedures, operation and maintenance responsibility for the entire project might best be vested in the Federal Government. In such cases, non-Federal interests should be obligated to contribute their share of costs to the Federal Government on a scheduled basis throughout the project life or to make a cash contribution of the capitalized value of the non-Federal share of the maintenance cost. Future maintenance costs are to be capitalized using the authorized discount rate.

(d) *Periodic nourishment.* Periodic nourishment is considered "construction" for cost-sharing purposes when in the opinion of the Chief of Engineers, such periodic nourishment is found to be a more economical erosion protection measure than retaining structures such as groins or when the nourishment is expected to be of benefit to shores beyond the project limits. Thus, projects recommending periodic nourishment should not include structures which materially reduce littoral drift from reaching downdrift shores. When sand replacement is proposed as a maintenance measure, as for exam-

ple when it would serve to maintain protection accompanied by structures intended to confine the benefits of the sand within a beach compartment rather than serving as a full or partial alternative to such structures, Federal aid toward its cost should not be recommended, except to the extent warranted in § 282.7(c), above. Projects with short low-profile groins included to maintain a shore alignment, but not to materially prevent littoral drift from nourishing downdrift beaches are eligible for periodic nourishment. Federal aid for periodic nourishment may continue throughout the economic life of the project, but a specified period of time, usually the economic life of the project, must be recommended in planning reports. If there is reason to doubt the technical viability of periodic nourishment for such a period of time, a shorter period may be recommended. After that period, the project should be reexamined to determine if Federal participation in periodic nourishment is the most efficient and economic solution. Continuation of such Federal participation or other modification of the project requires additional authorization.

(e) *Work for another Federal agency.* Work to protect lands under the jurisdiction of another Federal agency shall be accomplished by the Corps only on a reimbursable basis, upon request from the responsible agency. Protection of Army lands used for military purposes will be accomplished with military funds, not Civil Works funds.

§ 282.8 Plan formulation and evaluation.

(a) Projects shall be formulated in accordance with policies and procedures contained in ER 1105-2-200 and related regulation describing the planning process developed to implement the principles and standards, the National Environmental Policy Act, EO 11988, EO 11990 and other requirements. Consideration shall be given to both structural and nonstructural solutions. Plan formulation should be accomplished to arrive at the best solution, considering all factors, including engineering, economic, environmental, and social.

(b) As required by ER 1105-2-200, impacts will be determined to evaluate the alternative in terms of the planning objectives. Impacts normally associated with beach erosion control and hurricane, abnormal tidal, and lake flood protection projects are:

(1) Prevention of land loss and other physical damages,

(2) Reduction in maintenance costs of existing protection works,

(3) Reduction of emergency costs to residences, businesses, and governmental entities,

(4) Increased recreational usage, and where appropriate, relief of overcrowding for existing recreational usage,

(5) Changes in maintenance costs associated with navigation projects,

(6) Employment of unemployed or underemployed labor resources,

(7) Prevention of loss of historic and scenic aspects of the environment,

(8) Changes in shore processes and equilibrium conditions,

(9) Erosion along downdrift shores,

(10) Changes in floodplain development,

(11) Changes in the extent and quantity of wetlands, and

(12) Changes in water quality and ecology in the vicinity of construction activities.

§ 282.9 Cost sharing.

(a) *Beach erosion control.* Federal participation in the costs of beach erosion control projects is based on shore ownership, use, type and incidence of benefits as discussed below and summarized in Table 1.

(1) *Federally-owned lands* are protected at Federal expense. All costs allocated to restoration and protection are to be borne fully by the Federal Government.

(2) *Publicly-owned shore park and conservation areas* are eligible for Federal cost sharing up to 70 percent of the construction cost if *all* the following conditions are met:

(i) It is publicly owned.

(ii) It includes a zone extending landward from the mean low water line which excludes all permanent human habitation, including summer residences but not including the resi-

dences of park administrative and maintenance personnel. This zone is construed to mean any segment of the park landward of the mean low water line subject to flooding by storm tides in which destruction of natural protective features of the shore area by development is prevented, and from which development for human habitation is excluded. The purpose of this requirement is to prevent development which would be vulnerable to damage by ocean or lake waters and to eliminate hazards to human life and property.

(iii) It includes a beach suitable for recreational use.

(iv) It provides for preservation, conservation and development of the natural resources of the environment. In accordance with the overall mission or purpose of the park, the areas must be developed, operated, and maintained in a manner which preserves the desirable features and the natural resources of the locale. These resources may include areas or features in their natural condition, game preserves, natural scenic beauty, or other natural aspects which are peculiar to the environment or locale. The character of these parks may vary from extreme wilderness areas with minimum development for use by naturalists or campers to areas of intensified recreational use with full comfort, convenience, safety, and recreational facilities.

(v) It extends landward a sufficient distance to include where appropriate protective dunes, bluffs or other natural features such as swamps or low-lying areas, all of which must absorb and dissipate wave energy and flooding effects of storm tides. The landward width must be sufficient to protect development or potential development of the uplands from damage during storms of severe magnitude. Park facilities, such as roads, parking areas, bathhouses, and picnicking areas, in the park area and subjected to occasional flooding, may be permitted. The purpose of this requirement is to provide a protective buffer zone between the sea or lake and the uplands which would prevent damage of upland property and development. The buffer zone may be developed and used for recreational purposes, provided that the natural protective features of the shore area within the zone are not impaired.

(vi) It provides essentially full park facilities for appropriate public use. The meaning of essentially full park facilities would depend upon the intended conservation and recreational mission of the area. In the case of recreational beach parks intended for mass usage, full park facilities must include suitable access and bathhouse, comfort, parking, and recreational facilities adequate to insure realization of anticipated recreational benefits. In the case of park areas intended for other types of recreational use such as hunting, fishing, picnicking, camping, or nature study, park facilities as a minimum should provide suitable access and parking. Some part of the park frontage must, however, include a recreational beach to meet the requirements of the Act.

(3) An area which meets the above criteria for one portion of the frontage, but not for the entire frontage, will be divided into separate sections for cost sharing. The Federal share will be computed separately for each portion as appropriate, and a composite percentage will finally be computed for the entire park.

(4) *Publicly-owned shores* are eligible for Federal participation up to 50 percent of the construction cost.

(5) *Privately-owned shores* may be eligible for Federal cost sharing of up to 50 percent if there would be significant public benefits arising from public use or from direct protection of nearby public facilities. Federal participation is adjusted in accordance with the ratio of public benefits to total benefits. Recreation benefits resulting from beaches not open for public use are considered to be private benefits for cost apportionment purposes.

(6) *Benefits to private shores beyond project limits* of shore protection works, if trivial in amount, may be considered as incidental and not involved in cost-sharing considerations.

(7) Any statement in a beach erosion control report as to the percentage of construction costs to be borne by local interests or the Federal Government must be qualified as tentative since

the final apportionment will be based on the extent of shore in public ownership or use at the time of construction, or subsequent nourishment.

(b) *Hurricane, tidal and lake flood control.* For hurricane, tidal, and lake flood control protection projects, the Federal share of the project investment costs is limited to 80 percent. When the normal local costs of lands, easements, rights-of-way, and relocations amount to less than 20 percent of total first costs, the difference is required as a local cash contribution.

(c) *Multiple-purpose projects.* For multiple-purpose hurricane protection and beach erosion control projects, the Secretary of the Army acting through the Chief of Engineers, has discretionary authority to authorize a Federal share up to 70 percent of the construction costs. This discretionary authority will not be used unless normal cost allocation procedures produce inadvertent inequities in specific cases. Cases possibly warranting such adjustments are to be submitted to HQDA—(DAEN-CWP) WASH DC 20314 for consideration. If this discretionary authority is not used, the costs of the beach erosion control features required to stabilize the shore against wave action are considered to be joint costs and allocated between the hurricane and beach erosion control functions by the Separable Costs Remaining Benefits (SCRB) method (EM 1160-2-101).

§ 282.10 Local cooperation requirements.

Reporting officers must obtain a letter of intent from a public agency, authorized under State law, to fulfill the non-Federal obligations of water resource projects recommended for Federal participation. The letter will indicate that prior to construction, the sponsor will enter into a written agreement, as required by section 221 of Pub. L. 91-611, to provide assurances of local cooperation satisfactory to the Secretary of the Army. Such assurances include the contributions computed from the policies given in § 282.9 and the following non-Federal responsibilities:

(a) Provide without cost to the United States all necessary lands, easements, rights-of-way and relocations required for construction of the project, including that required for periodic nourishment.

(b) Hold and save the United States free from claims for damages which may result from construction and subsequent maintenance of the project, except damages due to the fault or negligence of the United States or its contractors.

(c) Assure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based during the economic life of the project (normally 50 years).

(d) Assure maintenance and repair, and local share of periodic beach nourishment, where applicable, during the economic life of the project as required to serve the intended purposes.

(e) Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms.

(f) Specific cases may also warrant assigning other additional local responsibilities, such as providing appurtenant facilities required for realization of recreational benefits.

(g) Comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646).

(h) Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352).

(i) In the case of single-purpose hurricane, tidal, or lake flood protection projects, the requirements of local cooperation will normally consist of §§ 282.10(a), 282.10(b), 282.10(d), 282.10(f), 282.10(g), and 282.10(h) in addition to the contributions required by § 282.9.

(j) The wording given in §§ 282.10(a) through 282.10(h) should be considered standard for all recommended plans which include shore protection as a plan purpose. Deviations from such wording should not be made unless the reporting officer has justifiable circumstances warranting such action.

(k) In addition to the above, all reports to Congress proposing Federal projects will include a requirement for an additional State contribution of five percent of the construction cost. Such contribution may be in cash or

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an in-kind contribution. Additional guidance regarding this item will be published at a future date. In the interim, this item should be coordinated with HQDA (DAEN-CWP-E, C or W) WASH DC 20314.

§ 282.11 Effective date.

This regulation is effective 15 January 1979.

Appendix A—Computation of Federal Costs for Shore Protection Plans

A-1. *Projects Benefiting Only One Category of Shore.* The Federal share of the cost of construction of a project which will benefit only one category of shore, see § 282.6(e), if any, may be computed by multiplying the cost of construction by the appropriate percentage of Federal participation from § 282.9

A-2. *Projects Benefiting Several Categories of Shore.* The Federal share of the cost of construction of a project which will benefit more than one category of shore, defined in § 282.6(e), may be computed by assigning proportionate shares of the total construction cost to each shore category involved, multiplying the costs thus assigned by the appropriate percentage of Federal participation from § 282.9 and summing the products thus obtained.

a. When the cost of construction per unit of benefited shore length is reasonably uniform for the entire project area, the total Federal cost of construction may be computed as a percentage of the total construction cost by the following formula:

Federal share of total construction cost, in percent =

$$\left\{\left[\frac{\text{Category I shore}}{\text{Total shore}}\right] + \left[\frac{\text{Category II shore}}{\text{Total shore}} \times 0.7\right] + \left[\left(\frac{\text{Category III shore}}{\text{Total shore}}\right) + \left(\frac{\text{Category IV shore}}{\text{Total shore}} \times \frac{\text{Public benefits along Category IV shore}}{\text{Total benefits along Category IV shore}}\right)\right] \times 0.5\right\} \times 100$$

b. When the cost of construction per unit of benefited shore length is not reasonably uniform for the entire project area, the project should be subdivided into compartments within which this condition is met. For each such compartment, the Federal cost of construction may be computed as a percentage of the total construction cost for the compartment by application of the formula in paragraph A-2a, using ownership figures for the compartment rather than the project as a whole. The cost of construction for individual project compartments should be developed on a physical occurence basis, insofar as possible, by first assigning costs which are specific to individual compartments and then distributing costs applicable to more than one compartment on an ownership basis. The total Federal cost of construction is obtained by adding the Federal costs computed for individual compartments.

c. When the cost of construction per unit of benefited shore length is not reasonably uniform for the entire project area, and division into relatively few substantial compartments within which this condition is met is not practicable, it will be necessary to compute the Federal share of construction cost on a section-by-section basis for all or part of the benefited shore length. When applying this method in extreme cases, it may be necessary to treat each individual parcel of benefited shore in a given category as a separate section. The net effect is the same as division of the benefited shore length into a large number of compartments and the procedure outlined in paragraph A-2b is applicable.

A-3. *Projects Including Periodic Nourishment as a Construction Measure* are discussed in § 282.7(d). Periodic beach nourishment may be recommended as a construction measure. In the case of the projects for which the costs of initial work (beach restoration or structures) and of periodic nourishment are uniformly distributed over the shore, the formula given in paragraph A-2a will be applied and the percentage of Federal participation will be the same for both

initial work and periodic nourishment. In cases of nonuniform cost distribution for either the initial construction or the periodic nourishment, or both, the level of Federal participation will be computed in accordance with paragraphs A-2b and A-2c, and will not necessarily be the same for initial construction and periodic nourishment.

A-4 *Projects Providing Minor or Indefinite Incidental Benefits to Privately Owned Shores.*

a. When the cost of works designed to benefit only publicly-owned shores would equal or exceed the cost of works which would in addition, benefit adjoining privately-owned shores, the benefits to the privately-owned shores, if trivial in amount, may be considered as incidental and the Federal share of construction costs may be computed by the following formula:

Federal share of total construction cost, in percent=

$$\left\{\left[\frac{\text{Category I frontage}}{\text{Total frontage}}\right] + \left[\frac{\text{Category II frontage}}{\text{Total frontage}} \times 0.7\right] + \left[\left(\frac{\text{All other frontage}}{\text{Total frontage}}\right) \times 0.5\right]\right\} 100$$

b. When, as may occur in the case of periodic beach nourishment, private shores beyond projects limits ultimately may receive benefits of indefinite nature and amount from the project, such benefits will be classed as incidental and these benefits and the shores involved will not be considered in determining the Federal share of project costs.

A-5 *Projects Which Reduce Federal Cost of Maintaining Authorized Navigation Projects.* Federal aid may be recommended for that portion of the project cost allocated to navigation, in addition to the aid determined pursuant to paragraphs A-1 through A-4. For purposes of this computation allocations will be made on a proportionate benefit basis with benefits limited to the alternative costs. The total Federal share of costs expressed as percentage (T) for the feature which results in the navigation benefits may be computed as a percentage of the total first cost for that feature by application of the following formula:

$$T = \left[\frac{N}{N + B} \times 100\right] + \left[\frac{B}{N + B} \times T_e\right]$$

where: N=Navigation benefits of feature, limited to alternative costs of dredging;

B=Beach erosion control benefits, limited to the cost of the alternative to provide the same beach protection benefits.

T_e=Federal share of cost of the shore protection features which results in navigation benefits, in percent, computed in accordance with paragraphs A-1 through A-4.

A-6. *Multiple Purpose Projects.* In the case of multiple purpose projects, such as those for shore protection and other purposes as hurricane protection and navigation (where new navigation features are involved rather than maintenance of an existing Federal project), the procedures outlined in paragraph A-1 through A-4 will be applied only to the portion of the total construction costs allocated to shore protection. Allocation of costs between functions will normally be made by the Separable Costs-Remaining Benefits (SCRB) method (see EM 1160-2-101).

Appendix B—Example Computations for Cost Sharing on Shore Protection Plans

B-1. *Example 1.* The following is a simplified example of cost apportionment between Federal and local interests for an economically justified shore protection project where shores in both public and private ownership are involved and significant public benefits are generated through protection of private shores. It is assumed that

a coordinated plan is proposed, that no section can be omitted, that the benefits to private shores are not incidental, that public benefits can be associated with only a portion of the private shores protected, and that the cost of protection per unit of benefitted shore length is reasonably uniform for the entire project area. If periodic nourishment is involved in this case, cost apportionment therefor would be on the same basis.

Item	Shore Capacity					
	I	II	III	IV	V	Total
Length, feet	500	10,000	3,000	4,500	2,000	20,000
Ownership	Federal	Public non-Fed (Conserv Area)	Public non-Fed	Private	Private	
Benefits (av.ann.$)						
Public	5,000	75,000	30,000	50,000	-	160,000
Private	-	-	-	25,000	40,000	65,000
Total	5,000	75,000	30,000	75,000	40,000	225,000
Computation of Federal share of construction cost	The formula given in paragraph A-2a is applicable. The Federal share expressed as a percent of the total first cost would be:					

$$\left\{\left[\frac{500}{20,000}\right] + \left[\frac{10,000}{20,000} \times 0.7\right] + \left[\left(\frac{3,000}{20,000}\right) + \left(\frac{4,500}{20,000} \times \frac{50,000}{75,000}\right)\right] \times 0.5\right\} 100$$

$$\{[0.025] + [0.35] + [0.15 + 0.15]\ 0.5\}\ 100 = 52.5 \text{ percent}$$

B-2. *Example 2* is substantially the same as Example 1, except that the cost of protection per unit of shore length is not reasonably uniform and division into two compartments is necessary. For simplicity, shore categories in each of these compartments have been limited to four. In actual cases shores in all five categories might be found in all compartments.

Item	Reach of Shore					
	Compartment 1		Compartment 2		Total	
Length, feet	15,000		5,000		20,000	
Construction cost, $:						
Total	750,000		625,000		1,375,000	
Per foot of shore	50.00		125.00		68.75	
Shore length by shore categories, feet:						
I	500		-		500	
II	9,000		1,000		10,000	
III	2,000		1,000		3,000	
IV	3,500		1,000		4,500	
V	-		2,000		2,000	
Total	15,000		5,000		20,000	
Benefits by shore categories, av. ann. $1,000:	Public	Private	Public	Private	Public	Private
I	5	-	-	-	5	-
II	60	-	15	-	75	-
III	15	-	15	-	30	-
IV	20	10	30	15	50	25
V	-	-	-	40	-	40
Total	100	10	60	55	160	65

Computation of Federal share of construction cost

The formula given in paragraph A-2a is applicable and is applied separately for each compartment.

Compartment 1

Federal share of construction cost for compartment, in percent =

$$\left\{\left[\frac{500}{15{,}000}\right] + \left[\frac{9{,}000}{15{,}000} \times 0.7\right] + \left[\left(\frac{2{,}000}{15{,}000}\right) + \left(\frac{3{,}500}{15{,}000}\right) \left(\frac{20}{30}\right) 0.5\right\} 100 = 59.7 \text{ percent}$$

Compartment 2

$$\left\{\left[\frac{1{,}000}{5{,}000} \times 0.7\right] + \left[\left(\frac{1{,}000}{5{,}000}\right) + \left(\frac{1{,}000}{5{,}000} \times \frac{30}{45}\right)\right] \times 0.5\right\} 100 = 30.7 \text{ percent}$$

Total Project

Compartment	Construction Cost, $	Federal share of Construction Cost	
		%	$
1	750,000	59.7	448,000
2	625,000	30.7	192,000
Total Project	1,375,000	46.5	640,000

B-3. *Example 3* is substantially the same as Example 1 except that it is assumed that certain features of the project involved would reduce Federal costs of maintaining an authorized Federal navigation project by $10,000 annually. This benefit is in addition to those shore protection benefits shown in Example 1. The proportionate share of shore protection benefits also accruing from those same features is assumed to be $70,000. Average annual benefits for those project features thus would be:

Shore protection	$70,000
Navigation	10,000
Total	$80,000

The Federal share of construction costs of those project features which do not contribute to the navigation benefit would be 52.5 percent, as computed in Example 1. The Federal share of construction costs for the project features contributing the navigation benefit, computed in accordance with formula given in paragraph A-5 and expressed as a percent of total construction cost for those features, would be:

$$\left(\frac{10,000}{80,000} \times 100\right) + \left(52.5 \times \frac{70,000}{80,000}\right) = 58.5 \text{ percent}$$

B-4. *Example 4* is similar to Example 2, except that the construction plan includes provision for periodic beach nourishment at an estimated average annual cost of $100,000 which would benefit the entire project frontage.

Item	Reach of Shore		
	Compartment 1	Compartment 2	Total
Length, feet	15,000	5,000	20,000
Construction cost, dollars:			
Initial measures:			
Total	545,000	455,000	1,000,000
Per feet of shore	36.33	91.00	50.00
Periodic nourishment: [1]			
Total (average annual)	75,000	25,000	100,000
Per feet of shore (average annual)	5.00	5.00	5.00
Shore length by shore categories, feet	([2])	([2])	([2])
Benefits by shore categories, average annual $1,000	([2])	([2])	([2])
Computation of Federal share of construction cost	([2])	([2])	([2])

[1]Total cost of periodic nourishment distributed between compartments on a frontage basis.
[2]Same as example 2.
[3]The formula given in paragraph A-2a is applicable and is applied separately for each compartment. The Federal aid percentages are as in Example 2: Compartment 1—59.7 percent, Compartment 2—30.7 percent.

Federal aid for the project as a whole is computed as follows:

INITIAL MEASURES

Compartment	Construction cost, dollars	Federal share of construction cost	
		Percent	Dollars
1	545,000	59.7	325,000
2	455,000	30.7	140,000
Total	1,000,000	[1]46.5	465,000

[1]This figure is the same as the result for Example 2 because the lengths and benefits by shore categories, and the relative compartment costs, are the same as for Example 2.

PERIODIC NOURISHMENT

Compartment	Periodic nourishment costs average annual dollars	Federal share of cost for periodic nourishment for period to be specified	
		Percent	Average annual dollars
1	75,000	59.7	44,800
2	25,000	30.7	7,700
Total	100,000	[1]52.5	52,500

[1]Note that the Federal share of periodic nourishment costs for the project as a whole is not the same as the Federal Share of other construction costs. (Paragraph A-3.)

B-5. *Comment on Examples.* The foregoing examples have been simplified for purposes of illustration, particularly in regard to the matter of uniformity of cost. In typical project cases, shore categories may be extensively intermixed and there may be a wide range of unit costs of protection in each category. Choice of the method for computation of Federal costs must be made on the basis of the conditions encountered

in individual cases. The principal alternatives available are between computation on the basis of the project as a whole as opposed to computation on a compartment-by-compartment or section-by-section basis. Reports should contain sufficient detail on costs, benefit occurrence, and alternative costs to support selection of the method of computation used.

PARTS 290–295—[RESERVED]

PART 305—[RESERVED]

PART 320—GENERAL REGULATORY POLICIES

Sec.

320.1 Purpose and scope.
320.2 Authorities to issue permits.
320.3 Related legislation.
320.4 General policies for evaluating permit applications.

AUTHORITY: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 42 FR 37133, July 19, 1977, unless otherwise noted.

§ 320.1 Purpose and scope.

(a) *Types of activities regulated.* This regulation and the regulations that follow (33 CFR Parts 321 through 329) prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army permits for various types of activities that occur in waters of the United States or the oceans. This part identifies the various Federal statutes that require Department of the Army permits before these activities can be lawfully undertaken; the related Federal legislation applicable to the review of each activity that requires a Department of the Army permit; and the general policies that are applicable to the review of all activities that require Department of the Army permits. Parts 321 through 324 address the various types of activities that require Department of the Army permits, including special policies and procedures applicable to those activities, as follows:

(1) Dams or dikes in navigable waters of the United States (Part 321);

(2) All other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (Part 322);

(3) All activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (Part 322);

(4) Construction of fixed structures and artificial islands on the outer continental shelf (Part 322);

(5) All discharges of dredged or fill material into the waters of the United States (Part 323); and

(6) All activities involving the transportation of dredged material for the purpose of dumping it in ocean waters (Part 324).

(b) *Forms of authorization.* Department of the Army permits for the above described activities are issued under various forms of authorization. These include individual permits; letters of permission that are issued following a review of an individual application for a Department of the Army permit; general permits that authorize the performance of a category or categories of activities in a specific geographical region after it is determined that these activities will cause only a minimal individual and cumulative adverse environmental impact; and nationwide permits that authorize the performance of certain specified activities throughout the Nation. The nationwide permits are found in 33 CFR 322.4 and 323.4. If an activity is covered by a general or nationwide permit, an application for a Department of the Army permit does not have to be made. In such cases, a person must only comply with the conditions contained in the general or nationwide permit to satisfy the requirements of law.

(c) *General instructions.* The procedures for processing all letters of permission, individual permits, and general permits are contained in 33 CFR Part 325. However, before reviewing those procedures, a person desiring to perform any activity that requires a Department of the Army permit is advised to review the general and special policies that relate to the particular activity as outlined in this Part 320 and Parts 321 through 324. The terms "navigable waters of the United States" and "waters of the United States" are used frequently through-

out these regulations, and it is important that the reader understand the difference from the outset. "Navigable waters of the United States" are defined in 33 CFR Part 329. These are the traditional waters where permits are required for work or structures pursuant to sections 9 and 10 of the River and Harbor Act of 1899. "Waters of the United States" are defined in 33 CFR 323.2(a). These waters include more than navigable waters of the United States and are the waters where permits are required for the discharge of dredged or fill material pursuant to section 404 of the Federal Water Pollution Control Act Amendments of 1972.

§ 320.2 Authorities to issue permits.

(a) Section 9 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401) (hereinafter referred to as section 9) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single State, the structure may be built under authority of the legislature of that State, if the location and plans or any modification thereof, are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit. Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966 (80 Stat. 941, 49 U.S.C. 1155g(6)(A)). See also 33 CFR Part 321. A Department of the Army authorization is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344). See CFR Part 323.

(b) Section 10 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403) (hereinafter referred to as section 10) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters, is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit, general permit, or letter of permission. The authority of the Secretary of the Army to prevent obstructions to navigation in the navigable waters of the United States was extended to artificial islands and fixed structures located on the outer continental shelf by Section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; 43 U.S.C. 1333(f)). See also 33 CFR Part 322.

(c) Section 11 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 404) authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads or other works may be extended or deposits made without approval of the Secretary of the Army. By policy stated in 33 CFR Part 328, effective May 27, 1970, harbor lines are guidelines only for defining the offshore limits of structures and fills insofar as they impact on navigation interests. Permits for work shoreward of those lines must be obtained in accordance with Section 10 and, if applicable, Section 404.

(d) Section 13 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C 407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been

superseded by the permit authority provided the Administrator, Environmental Protection Agency, and the States under Sections 402 and 405 of the Federal Water Pollution Control Act Amendments of 1972 (92p-500, 86 Stat. 816, 33 U.S.C. 1342 and 1345). See 40 CFR Parts 124 and 125.

(e) Section 14 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408) provides that the Secretary of the Army on the recommendation of the Chief of Engineers may grant permission for the temporary occupation or use of any seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(f) Section 1 of the River and Harbor Act of June 13, 1902 (32 Stat. 371; 33 U.S.C. 565) allows any persons or corporations desiring to improve any navigable river at their own expense and risk to do so upon the approval of the plans and specifications by the Secretary of the Army and the Chief of Engineers. Improvements constructed under this authority, which are primarily in Federal project areas, remain subject to the control and supervision of the Secretary of the Army and the Chief of Engineers.

(g) Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500, 86 Stat. 816, 33 U.S.C. 1344) (hereinafter referred to as Section 404) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. See 33 CFR Part 323. The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army, published in 40 CFR Part 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers may consider the economic impact on navigation of such a prohibition in reaching his decision. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

(h) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (Pub. L. 92-532, 86 Stat. 1052, 33 U.S.C. 1413) (hereinafter referred to as section 103) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters where it is determined that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological system, or economic potentialities. The selection of disposal sites will be in accordance with criteria, developed by the Administrator of the EPA in consultation with the Secretary of the Army, published in 40 CFR Parts 220 through 229. However, similar to the EPA Administrator's limiting authority cited in paragraph (g) of this section, the Administrator can prevent the issuance of a permit under this authority if he finds that the dumping of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas. See also 33 CFR Part 324.

§ 320.3 Related legislation.

(a) Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500; 86 Stat. 816, 33 U.S.C. 1341) requires any non-Federal applicant for a Federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control

agency having jurisdiction over the affected waters at the point where the discharge originates or will originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(b) Section 307(c) of the Coastal Zone Management Act of 1972, as amended (Pub. L. 94-370.90 Stat. 1013, 16 U.S.C. 1456(c)) requires Federal Agencies conducting activities, including development projects, directly affecting a State's coastal zone, to comply, to the maximum extent practicable, with an approved State coastal zone management program. It also requires any non-Federal applicant for a Federal License or permit to conduct an activity affecting land or water uses in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the State has concurred with the non-Federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the State's coastal zone management program. See also 15 CFR Part 930.

(c) Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (Pub. L. 92-532, 86 Stat. 1052, 16 U.S.C. 1432) authorizes the Secretary of Commerce, after consultation with other interested Federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters or of the Great Lakes and their connecting waters or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations * * *". See also 33 CFR Part 325 and 33 CFR 209.410.

(e) The Fish and Wildlife Act of 1956 (16 U.S.C 742a, et seq.) the Migratory Marine Game-Fish Act (16 U.S.C. 760c-760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) and other acts express the concern of Congress with the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal agency that proposes to control or modify any body of water must first consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency exercising administration over the wildlife resources of the affected State.

(f) The Federal Power Act of 1920 (41 Stat. 1063; 16 U.S.C. 791a et seq.), as amended, authorizes the Federal Power Commission (FPC) to issue licenses for the construction, operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a power project. However, where such structures will affect the navigable capacity of any navigable waters of the United States (as de-

fined in 16 U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a recommendation to the FPC for the inclusion of appropriate provisions in the FPC license rather than the issuance of a separate Department of the Army permit under 33 U.S.C. 401 et seq. As to any other activities in navigable waters not constituting construction, operation and maintenance of physical structures licensed by the FPC under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 et seq. remain fully applicable. In all cases involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping in ocean waters, Section 404 or Section 103 will be applicable.

(g) The National Historic Preservation Act of 1966 (80 Stat. 915 16, U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places, or eligible for listing. The concern of Congress for the preservation of significant historical sites is also expressed in the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. 469 et seq.), which amends the Act of June 27, 1960. By this Act, whenever a Federal construction project or Federally licensed project, activity or program alters any terrain such that significant historical or archeological data is threatened, the Secretary of the Interior may take action necessary to recover and preserve the data prior to the commencement of the project. See also 33 CFR Part 305.

(h) The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) prohibits any developer or agent from selling or leasing any lot in a subdivision (as defined in 15 U.S.C. 1701(3)) unless the purchaser is furnished in advance a printed property report containing information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is part of a project that requires Department of the Army authorization, the Property Report is required by Housing and Urban Development regulation to state whether or not a permit has been applied for, issued, or denied by the Corps of Engineers for the development under Section 10 or Section 404. The Property Report is also required to state whether or not any enforcement action has been taken as a consequence of non-application for or denial of such permit.

(i) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) declares the intention of the Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act provides that Federal agencies must utilize their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized by that Agency will not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretaries of Interior or Commerce, as appropriate, to be critical. See also 50 CFR Part 17.

(j) The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. The Secretary of Transportation may issue such a license to an applicant if he determines, among other things, that the construction and operation of the deepwater port is in the national interest and consistent with national security and other national policy goals and objectives. An application for a deepwater port license constitutes an application for all Federal authorizations required for the ownership, construction, and operation of a deepwater port, including applications for

Section 10, Section 404 and Section 103 permits which must also be issued by the Department of the Army pursuant to the authorities listed in § 320.2. The Secretary of Transportation must obtain the views and recommendations of all Federal agencies having jurisdiction over any aspect of the deepwater port construction and operation prior to issuing a license.

(k) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harrassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act.

(l) Section 7(a) of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1278 et seq.) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. No department or agency of the United States shall recommend authorizing of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(m) Section 6(f) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897, 16 U.S.C. 460 *l*–4, *et seq.*) provides that no property acquired or developed with assistance from the Land and Water Conservation Fund shall, without the approval of the Secretary of the Interior, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

§ 320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for Department of the Army permits. Additional policies specifically applicable to certain types of activities are identified in Parts 321 through 324 of this chapter.

(a) *Public interest review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process (e.g., see 33 CFR 209.400, Guidelines for Assessment of Econom-

ic, Social and Environmental Effects of Civil Works Projects). That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered; among those are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work;

(ii) The desirability of using appropriate alternative locations and methods to accomplish the objective of the proposed structure or work;

(iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may have on the public and private uses to which the area is suited; and

(iv) The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated structures or work in the general area.

(b) *Effect on wetlands.* (1) Wetlands are vital areas that constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve important natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands, the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected; and

(vii) Wetlands through natural water filtration processes serve to purify water.

(3) Although a particular alteration of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it is part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas in consultation with the appropriate Regional Director of the Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate State agency to assess the cumulative effect of activities in such areas.

(4) No permit will be granted to work in wetlands identified as important by paragraph (b) (2) of this section, unless the District Engineer concludes, on the basis of the analysis required in paragraph (a), above, that the benefits of the proposed alteration outweigh the damage to the wetlands resource and the proposed alteration is necessary to realize those benefits. In evaluating whether a particular alteration is necessary, the District Engineer shall consider whether the pro-

posed activity is primarily dependent on being located in, or in close proximity to the aquatic environment and whether feasible alternative sites are available. The applicant must provide sufficient information on the need to locate the proposed activity in the wetland and must provide data on the basis of which the availability of feasible alternative sites can be evaluated.

(5) In addition to the policies expressed in this subpart the Congressional policy expressed in the Estuary Protection Act, Pub. L. 90-454, and State regulatory laws or programs for classification and protection of wetlands will be given great weight.

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (§ 320.3(e) above) Corps of Engineers officials will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which the work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. They will give great weight to these views on fish and wildlife considerations in evaluating the application. The applicant will be urged to modify his proposal to eliminate or mitigate any damage to such resources, and in appropriate cases the permit may be conditioned to accomplish this purpose.

(d) *Water quality.* Applications for permits for activities which may affect the quality of a water of the United States will be evaluated for compliance with applicable effluent limitations, water quality standards, and management practices during the construction, operation, and maintenance of the proposed activity. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of Section 401 of the Federal Water Pollution Control Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration. Any permit issued may be conditioned to implement water quality protection measures.

(e) *Historic, scenic, and recreational values.* (1) Applications for permits covered by this regulation may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on the enhancement, preservation, or development of such values. Recognition of those values is often reflected by State, regional, or local land use classifications, or by similar Federal controls or policies. In both cases, action on permit applications should, insofar as possible, be consistent with, and avoid adverse effect on, the values or purposes for which those classifications, controls, or policies were established.

(2) Specific application of the policy in paragraph (e)(1) of this section, applies to:

(i) Rivers named in Section 3 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273 et seq.); those proposed for inclusion as provided by Sections 4 and 5 of the Act, or by later legislation; and wild, scenic, and recreational rivers established by State and local entities;

(ii) Historic, cultural, or archeological sites or practices as provided in the National Historic Preservation Act of 1966 (83 Stat. 852, 42 U.S.C. 4321 et seq.) (see also Executive Order 11593, May 13, 1971, and Statutes there cited). Particular attention should be directed toward any district, site, building, structure, or object listed or eligible for listing in the National Register of Historic Places;

(iii) Sites included in or determined eligible for listing in the National Registry of Natural Landmarks which are published periodically in the FEDERAL REGISTER;

(iv) Sites acquired or developed with the assistance of the Land and Water Conservation Fund (78 Stat. 897, 16 U.S.C. 460, 1-4, et seq.) or the Recreational Demonstrations Projects Act of 1942 (Pub. L. 77-594, 56 Stat. 326)

and other public parks and recreation areas; and

(v) Any other areas named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal law for similar and related purposes, such as estuarine and marine sanctuaries.

(f) *Effect on limits of the territorial sea.* Structures or work affecting coastal waters may modify the coast line or base line from which the three mile belt is measured for purposes of the Submerged Lands Act and International Law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore. (The Submerged Lands Act, 67 Stat. 29, U.S. Code Section 1301(c), and United States vs. California, 381 U.S. 139 1965), 382 U.S. 448 (1966).) All applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The District Engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, D.C. 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the file of the application. After completion of standard processing procedures, the file will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) *Interference with adjacent properties or water resource projects.* Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) Because a landowner has the general right to protect his property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, the District Engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources. A significant probability of resulting damage to nearby properties can be a basis for denial of an application.

(2) A landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby landowners and to the general public's right of navigation on the water surface. Proposals which create undue interference with access to, or use of, navigable waters will generally not receive favorable consideration.

(3) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR Part 329) and may interfere with an authorized Federal project, the applicant should be apprised in writing of the fact and of the possibility that a Federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the River and Harbor Act of 1899 (see 33 CFR Parts 321 and 322) which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claims or right to compensation will accrue from any such damage.

(4) Proposed activities which are in the area of a Federal project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(h) *Activities affecting coastal zones.* Applications for Department of the Army permits for activities affecting the coastal zones of those States having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-Federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate State agency has concurred with the certification or has waived its right to do so. however, a permit may be issued to a non-Federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security. Federal agency applicants for Department of the Army permits are responsible for complying with the Coastal Zone Management Act's directives for assuring that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved State coastal zone management programs.

(i) *Activities in marine sanctuaries.* Applications for Department of the Army authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary. Authorizations so issued will contain such special conditions as may be required by the Secretary of Commerce in connection with his certification.

(j) *Other Federal, state, or local requirements.* (1) Processing of an application for a Department of the Army permit normally will proceed concurrently with the processing of other required Federal, State, and/or local authorizations or certification. Where the required Federal, State and/or local certification and/or authorization has been denied, the application for a Department of the Army permit will be denied without prejudice to the right of the applicant to reinstate processing of his application if subsequent approval is received from the appropriate Federal, State and/or local agency. Even if official certification and/or authorization is not required by State or Federal law, but a State, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) Where officially adopted State, regional, or local land-use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest and shall be considered in addition with the other national factors of the public interest identified in § 320.4(a).

(3) A proposed activity may result in conflicting comments from several agencies within the same State. While many States have designated a single State agency or individual to provide a single and coordinated State position regarding pending permit applications, where a State has not so designated a single source, District Engineers will elicit from the Governor an expression of his views and desires concerning the application or, in the alternative, an expression from the Governor as to which State agency represents the official State position in this particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the processing of the permit application, a permit will generally be issued following receipt of a favorable State determination provided the concerns, policies, goals, and requirements as ex-

pressed in 33 CFR Parts 320 through 324, and the following statutes have been followed and considered: The National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archaeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the Federal Water Pollution Control Act (see § 320.3, above).

(5) If the responsible Federal, State, and/or local agency fails to take definitive action to grant or deny required authorizations or to furnish comments as provided in paragraph (j)(3) of this section, within three months of the issuance of the public notice, the District Engineer shall process the application to a conclusion.

(6) Permits will not be issued where certification or authorization of the proposed work is required by Federal, State and/or local law and that certification or authorization has been denied.

(7) The District Engineer may, in those States with ongoing permit programs for activities regulated by Department of the Army permits, enter into an agreement with the States to jointly process and evaluate Department of the Army and State permit applications. This may include the issuance of joint public notices; the conduct of joint public hearings, if held; and the joint review and analysis of information and comments developed in response to the public notice, public hearing, the environmental assessment and the environmental impact statement (if necessary), the Fish and Wildlife Coordination Act, the Historical and Archaeological Preservation Act, the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and the Federal Water Pollution Control Act. In such cases, applications for Department of the Army permits may be processed concurrently with the processing of the State permit to an independent conclusion and decision by the District Engineer and appropriate State agency.

(k) *Safety of impoundment structures.* Unless an adequate inspection program is required by another Federal licensing agency or will be performed by another Federal agency, the District Engineer will condition permits for impoundment structures to require that the permittee operate and maintain the structure properly to insure public safety. The District Engineer may condition such permits to require periodic inspections and to indicate that failure to accomplish actions to assure the public safety will be considered cause to revoke the permit.

(l) *Floodplains.* Executive Order 11988, dated May 24, 1977 requires each Federal agency, in its conduct of Federal programs that affect land use including the regulation of water resources, to take action to reduce the risk of flood loss; to minimize the impact of floods on human safety, health and welfare; and to restore and preserve the natural and beneficial values served by floodplains. In evaluating whether activities located in a floodplain that require Department of the Army permits are in the public interest, available alternatives to avoid adverse effects from and incompatible development in floodplains shall be considered.

PART 321—PERMITS FOR DAMS AND DIKES IN NAVIGABLE WATERS OF THE UNITED STATES

Sec.

321.1 General.
321.2 Definitions
321.3 Special policies and procedures.

AUTHORITY: 33 U.S.C. 401.

SOURCE: 42 FR 37138, July 19, 1977, unless otherwise noted.

§ 321.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize

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the construction of a dike or dam in a navigable water of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401). See 33 CFR 320.2(a). Dams and dikes in navigable waters of the United States also require Department of the Army permits under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344). Applicants for Department of the Army permits under this part should also refer to 33 CFR Part 323 to satisfy the requirements of Section 404.

§ 321.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark (mean higher high water mark on the Pacific coast), and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "dam" means an impoundment structure that completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce.

(c) The term "dike" means an embankment, low dividing wall, or other protective barrier that completely spans a navigable water of the United States and that may obstruct interstate water-borne commerce.

§ 321.3 Special policies and procedures.

The following additional special policies and procedures shall be applicable to the evaluation of permit applications under this regulation:

(a) The Secretary of the Army will decide whether Department of the Army authorization for a dam or dike in a navigable water of the United States will be issued, since this authority has not been delegated to the Chief of Engineers. The conditions to be imposed in any instrument of authorization will be recommended by the District Engineer when he forwards his report to the Secretary of the Army, through the Chief of Engineers, pursuant to 33 CFR 325.11.

(b) A Department of the Army application under Section 9 will not be processed until the approval of the United States Congress has been obtained if the navigable water of the United States is an interstate waterbody, or until the approval of the appropriate State legislature has been obtained if the navigable water of the United States is solely within the boundaries of one State.

PART 322—PERMITS FOR STRUCTURES OR WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Sec.

322.1 General.
322.2 Definitions.
322.3 Activities requiring permits.
322.4 Structures and work permitted by this regulation.
322.5 Special policies.

APPENDIX A—U.S. COAST GUARD/CHIEF OF ENGINEERS, MEMORANDUM OF AGREEMENT

APPENDIX B—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR CONSTRUCTION OR OTHER WORK AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

AUTHORITY: 33 U.S.C. 403.

SOURCE: 42 FR 37139, July 19, 1977, unless otherwise noted.

§ 322.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325 those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10). See 33 CFR 320.2(b). Certain structures or work in or affecting navigable waters of the United States are also regulated under other authorities of the Department of the Army. These include discharges of dredged or fill material into waters of the United States, including the territorial seas,

pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344; see 33 CFR part 323) and the transportation of dredged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413, see 33 CFR part 324). A Department of the Army permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark (mean higher high water mark on the Pacific coast), and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "structure" shall include, without limitation, any pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, jetty, permanent mooring structure, power transmission lines, permanently moored floating vessels, piling, aids to navigation, or any other permanent or semi-permanent obstacle or obstruction.

(c) The term "work" shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term "letter of permission" means an individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.5(b).

(e) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR Part 325 and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR Part 320.

(f) The term "general permit" means a Department of the Army authorization that is issued for a category or categories of structures or work in a specified region of the country, when those structures or work are substantially similar in nature and cause only minimal individual and cumulative adverse environmental impact. A general permit is issued following an evaluation of the proposed category of activities that it will authorize in accordance with the procedures of this regulation (322.5(b)), 33 CFR Part 325, and a determination that the proposed discharges will be in the public interest pursuant to 33 CFR Part 320.

(g) The term "nationwide permit" means a Department of the Army authorization that has been issued by this regulation in § 322.4 to permit certain structures or work in or affecting navigable waters of the United States throughout the Nation.

§ 322.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required under Section 10 for all structures or work in or affecting navigable waters of the United States except for bridges and causeways (see Appendix A) and structures or work licensed under the Federal Power Act of 1920. Activities that were commenced or completed shoreward of established Federal harbor lines before May 27, 1970 (see 33 CFR Part 328) also do not require Section 10 permits; However, if those activities involve the discharge of dredged or fill material into waters of the United States after October 18, 1972, a Section 404 permit is required (see 33 CFR Part 323).

(1) Structures or work are in the navigable waters of the United States if they are within limits defined in 33 CFR Part 329. Structures or work out-

side these limits are subject to the provisions of law cited in paragraph (a) of this section, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on the navigable capacity of the waterbody. For purposes of a Section 10 permit, a tunnel or other structure under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the waterbody.

(2) Pursuant to Section 154 of the Water Resource Development Act of 1976 (Pub. L. 94-587), Department of the Army permits will not be required under Section 10 to construct wharves and piers in any waterbody, located entirely within one State, that is a navigable water of the United States solely on the basis of its historical use to transport interstate commerce. Section 154 applies only to the construction of a single pier or wharf and not to marinas. Furthermore, Section 154 is not applicable to any pier or wharf that would cause an unacceptable impact on navigation.

(b) *Outer continental shelf.* Department of the Army permits will also be required for the construction of artificial islands and fixed structures on the outer continental shelf pursuant to Section 4(f) of the Outer Continental Shelf Lands Act (see 33 CFR 320.2(b)).

(c) *Activities of Federal agencies.* Except as specifically provided in this paragraph, activities of the type described in paragraphs (a) and (b) of this section, done by or on behalf of any Federal agency, other than any work or structures in or affecting navigable waters of the United States that are part of the Civil Works activities of the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under this regulation. Division and District Engineers will therefore advise Federal agencies accordingly, and cooperate to the fullest extent in expediting the processing of their applications.

(1) Congress has delegated to the Secretary of the Army and the Chief of Engineers in Section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States. The general legislation by which Federal agencies are empowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of Section 10. If an agency asserts that it has Congressional authorization meeting the test of Section 10 or would otherwise be exempt from the provisions of Section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of Section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to State or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy.

§ 322.4 Structures and work permitted by this regulation.

The following structures or work are hereby permitted for purposes of Section 10 and do not require separate Department of the Army permits:

(a) The placement of aids to navigation by the U.S. Coast Guard; see § 322.5(e), below;

(b) Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized; see § 322.5(g) of this section;

(c) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or of any currently serviceable structure constructed prior to the requirement for authorization; provided such

repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure, and further provided that the structure to be maintained has not been put to uses differing from uses specified for it in any permit authorizing its original construction;

(d) Marine life harvesting devices such as pound nets, crab traps, eel pots, lobster traps, provided there is no interference with navigation;

(e) Staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar scientific structures provided there is no interference with navigation;

(f) Survey activities including core sampling; and

(g) Structures or work completed before 18 December 1968 or in waterbodies over which the District Engineer has not asserted jurisdiction provided there is no interference with navigation.

§ 322.5 Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 10 permits. (See Appendix B.) The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) *General.* Department of the Army permits will be required for structures or work in or affecting navigable waters of the United States. Certain structures or work specified in § 322.4 are permitted by this regulation. If a structure or work is not permitted by this regulation, an individual or general Section 10 permit will be required.

(b) *General Permits.* The District Engineer may, after compliance with the other procedures of 33 CFR Part 325, issue general permits for certain clearly described categories of structures or work, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories will not require individual permit processing by the procedures of 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that the public interest requires such individual review.

(1) District Engineers will include only those activities that are substantially similar in nature, that cause only minimal adverse environmental impact when performed separately, and that will have only a minimal adverse cumulative effect on the environment as categories which are candidates for general permits.

(2) In addition to the conditions prescribed in Appendix C of 33 CFR Part 325, any general permit issued by the District Engineer shall prescribe the following conditions:

(i) The maximum quantity of material that may be discharged and the maximum area that may be modified by structures or work that are authorized for a single or incidental operation (if applicable);

(ii) A description of the category or categories of activities included in the general permit; and

(iii) The type of water(s) into which the activity may occur.

(3) The District Engineer may require reporting procedures.

(4) A general permit may be revoked if it is determined that the cumulative effects of the activities authorized by it will have an adverse impact on the public interest provided the procedures of 33 CFR 325.7 are followed. Following revocation, application for any future activities in areas covered by the general permit shall be processed as applications for individual permits.

(c) *Non-Federal dredging for navigation.* (1) The benefits which an authorized Federal navigation project are intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging an access channel to dock and berthing facilities or deepening such a channel to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation projects and, to the maximum practical extent, will be coordinated with interested Federal, State, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-

Federal activities which are not so coordinated will be individually evaluated in accordance with this regulation. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will, therefore, be accorded to the fullest extent possible to both Federal and non-Federal operations. Furthermore, permits for non-Federal dredging operations, will contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained, disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values.

(2) A permit for the dredging of a channel, slip, or other such project for navigation will also authorize the periodic maintenance dredging of the project. Authority for maintenance dredging will be subject to revalidation at regular intervals to be specified in the permit. Revalidation will be in accordance with the procedures prescribed in 33 CFR 325.6. The permit, however, will require the permittee to give advance notice to the District Engineer each time maintenance dredging is to be performed. Where the maintenance dredging involves the discharge of dredged material into waters of the United States or the transportation of dredged material for the purpose of dumping in the ocean waters, the procedures in 33 CFR Parts 323 and 324 respectively shall also be followed.

(d) *Structures for small boats.* As a matter of policy, in the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District Engineers will inform applicants of the hazards involved and encourage safety in location, design and operation. Corps of Engineers officials will also encourage cooperative or group use facilities in lieu of individual proprietor use facilities.

(1) Letters transmitting permits for structures for small boats will, where applicable, include the following language: "Notice is hereby given that a possibility exists that the structure permitted may be subject to damage by wave wash from passing vessels. Your attention is invited to special condition————of the permit." The appropriate designation of the permit condition placing responsibility on the permittee and not on the United States for integrity of the structure and safety of boats moored thereto will be inserted.

(2) Floating structures for small recreational boats or other recreational purposes in lakes controlled by the Corps of Engineers under a Resources Manager are normally subject to permit authorities cited in § 322.3, above, when those waters are regarded as navigable waters of the United States. However, such structures will not be authorized under this regulation but will be regulated under applicable regulations of the Chief of Engineers published in 36 CFR 327.19 if the land surrounding those lakes is under complete Federal ownership. District Engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake Resources Manager's office.

(e) *Aids to navigation.* The placing of fixed and floating aids to navigation in a navigable water of the United States is within the purview of Section 10 of the River and Harbor Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast

Guard because of their control of marking, lighting and standardization of such navigation aids. Applications for permits for installation of aids to navigation will, therefore, be coordinated with the appropriate District Commander, U.S. Coast Guard, and permits for such aids will include a condition to the effect that the permittee will conform to the requirements of the Coast Guard for marking, lighting, etc. Since most fixed and floating aids to navigation will not ordinarily significantly affect environmental values, the usual form of authorization to be used will be a letter of permission (See 33 CFR 325.1(b)).

(f) *Outer continental shelf.* Artificial islands and fixed structures located on the outer continental shelf are subject to the standard permit procedures of this regulation. Where the islands or structures are to be constructed on lands which are under mineral lease from the Bureau of Land Management, Department of the Interior, that agency, in cooperation with other Federal agencies, fully evaluates the potential effect of the leasing program on the total environment. Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security. The public notice will so identify the criteria.

(g) *Canals and other artificial waterways connected to navigable waters of the United States.* (1) A canal or similar artificial waterway is subject to the regulatory authorities discussed in § 322.3, above, if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, condition, or capacity. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of this regulation. For all other canals the exercise of regulatory authority is restricted to those activities which affect the course, condition, or capacity of the navigable waters of the United States. Examples of the latter may include the length and depth of the canal; the currents, circulation, quality and turbidity of its waters, especially as they affect fish and wildlife values; and modifications or extensions of its configuration.

(2) The proponent of canal work should submit his application for a permit, including a proposed plan of the entire development, and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal, to the District Engineer before commencing any form of work. If the connection to navigable waters of the United States has already been made without a permit, the District Engineer will proceed in accordance with 33 CFR Part 326. Where a canal connection is planned, an application for a Section 10 permit should be made at the earliest stage of planning. Where the canal construction has already begun, the District Engineer will, in writing, advise the proponent of the need for a permit to connect the canals to navigable waters of the United States. He will also ask the proponent if he intends to make such a connection and will request the immediate submission of the plans and permit application if it is so intended. The District Engineer will also advise the proponent that any work is done at the risk that, if a permit is required, it may not be issued, and that the existence of partially completed excavation work will not be allowed to weigh favorably in evaluation of the permit application.

(h) *Facilities at the borders of the United States.* (1) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(2) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the exportation or im-

portation of natural gas to or from a foreign country, must be made to the Federal Power Commission. (Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(E), 15 U.S.C. 717(b), and 18 CFR Parts 32 and 153).

(3) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.766).

(4) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; facilities for the exportation or importation of water or sewage to or from a foreign country; and monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country. (Executive Order 11423, August 16, 1968.)

(5) A Department of the Army permit under Section 10 of the River and Harbor Act of 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has been issued as provided above, the decision whether to issue the Department of the Army permit will be based primarily on factors of navigation, since the basic existence and operation of the facility will have been examined and permitted as provided by the Executive orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in waters of the United States or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate Department of the Army authorizations under Section 404 of the Federal Water Pollution Control Act or under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, are also required (See 33 CFR Parts 323, 324).

(i) *Power transmission lines.* (1) Permits under Section 10 of the River and Harbor Act of 1899 are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Federal Power Commission under the Federal Water Power Act of 1920. If an application is received for a permit for lines which are part of a water power project, the applicant will be instructed to submit his application to the Federal Power Commission. If the lines are not part of a water power project, the application will be processed in accordance with the procedures prescribed in this regulation.

(2) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code.

MINIMUM ADDITIONAL CLEARANCE ABOVE CLEARANCE REQUIRED FOR BRIDGES

Nominal system voltage kilovolt	Feet [1]
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

[1] Above clearance required for bridges.

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be re-

quired if the public interest so indicates.

(j) *Seaplane operations.* (1) Structures in navigable waters of the United States associated with seaplane operations require Department of the Army permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(2) The FAA must be notified by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, District Engineer, and other interested parties as to the effects of the proposal on the use of airspace. The District Engineer will therefore refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to their recommendations when evaluating the general public interest.

(3) If the seaplane base will serve air carriers licensed by the Civil Aeronautics Board, the applicant must receive an airport operating certificate from the FAA. That certificate reflects determination and conditions relating to the installation operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the District Engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(k) *Foreign Trade Zones.* The Foreign Trade Zones Act (48 Stat. 998-1003, 19 U.S.C. 81a to 81u, as amended) authorizes the establishment of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published in 15 CFR Part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the District Engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of this regulation. Evaluation by a District Engineer of a permit application may give recognition to the consideration by the Board of the general economic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

Appendix A—U.S. Coast Guard/Chief of Engineers, Memorandum of Agreement

1. PURPOSE AND AUTHORITY

A. The Department of Transportation Act, the Act of October 15, 1966, P.L. 89-670, transferred to and vested in the Secretary of Transportation certain functions, powers and duties previously vested in the Secretary of the Army and the Chief of Engineers. By delegation of authority from the Secretary of Transportation (49 CFR 1.46(c)) the Commandant, U.S. Coast Guard, has been authorized to exercise certain of these functions, powers and duties relating to bridges and causeways conferred by:

(1) The following provision of law relating generally to drawbridge operating regulations: Section 5 of the Act of August 18, 1894, as amended (28 Stat. 362; 33 U.S.C. 499);

(2) The following law relating generally to obstructive bridges: The Act of June 21, 1940, as amended (The Truman-Hobbs Act) (54 Stat. 497; 33 U.S.C. 511 et seq.);

(3) The following laws and provisions of law to the extent that they relate generally to the location and clearances of bridges and causeways in the navigable waters of the United States:

(a) Section 9 of the Act of March 3, 1899, as amended (30 Stat. 1151; 33 U.S.C. 401);

(b) The Act of March 23, 1906, as amended (34 Stat. 84; 33 U.S.C. 491 et seq.); and

(c) The General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525 et seq.) except Sections 502(c) and 503.

B. The Secretary of the Army and The Chief of Engineers continue to be vested with broad and important authorities and responsibilities with respect to navigable waters of the United States, including, but not limited to, jurisdiction over excavation and filling, design flood flows and construction of certain structures in such waters, and the prosecution of waterway improvement projects.

C. The purposes of this agreement are:

(1) To recognize the common and mutual interest of the Chief and Engineers and the Commandant, U.S. Coast Guard, in the orderly and efficient administration of their respective responsibilities under certain Federal statutes to regulate certain activi-

ties in navigable waters of the United States:

(2) To clarify the areas of jurisdiction and the responsibilities of the Corps of Engineers and the Coast Guard with respect to:

(a) The alteration of bridges,

(1) In connection with Corps of Engineers waterway improvement projects, and

(2) Under the Truman-Hobbs Act;

(b) The construction, operation and maintenance of bridges and causeways as distinguished from other types of structures over or in navigable waters of the United States;

(c) The closure of waterways and the restriction of passage through or under bridges in connection with their construction, operation, maintenance and removal; and

(d) The selection of an appropriate design flood flow for flood hazard analysis of any proposed water opening.

(3) To provide for coordination and consultation on projects and activities in or affecting the navigable waters of the United States.

In furtherance of the above purposes the undersigned do agree upon the definitions, policies and procedures set forth below.

2. ALTERATION OF BRIDGES IN OR ACROSS NAVIGABLE WATERS WITHIN CORPS OF ENGINEERS PROJECTS

A. The Chief of Engineers agrees to advise and consult with the Commandant on navigation projects contemplated by the Corps of Engineers which require the alteration of bridges across the waterways involved in such projects. The Chief of Engineers also agrees to include in such project proposals the costs of alterations, exclusive of betterments, of all bridges within the limits of the designated project which after consultation with the Commandant he determines to require alteration to meet the needs of existing and prospective navigation. Under this concept the federal costs would be furnished under the project.

B. The Commandant of the Coast Guard agrees to undertake all actions and assumes all responsibilities essential to the determination of navigational requirements for horizontal and vertical clearances of bridges across navigable waters necessary in connection with any navigation project by the Chief of Engineers. Further, the Commandant agrees to conduct all public proceedings necessary thereto and establish guide clearance criteria where needed for the project objectives.

3. ALTERATION OF BRIDGES UNDER THE TRUMAN-HOBBS ACT

The Commandant of the Coast Guard acknowledges and affirms the responsibility of the Coast Guard, under the Truman-Hobbs Act, to program and fund for the alteration of bridges which, as distinct from project related alterations described in paragraph 2 herein, become unreasonable obstructions to navigation as a result of factors or changes in the character of navigation and this agreement shall in no way affect, impair or modify the powers or duties conferred by that Act.

4. APPROVAL, ALTERATION AND REMOVAL OF OTHER BRIDGES AND CAUSEWAYS

A. *General Definitions.* For purposes of this Agreement and the administration of the statutes cited in 1.A.(3) above, a "bridge" is any structure over, on or in the navigable waters of the United States which (1) is used for the passage or conveyance of persons, vehicles, commodities and other physical matter and (2) is constructed in such a manner that either the horizontal or vertical clearance, or both, may affect the passage of vessels or boats through or under the structure. This definition includes, but is not limited to, highway bridges, railroad bridges, foot bridges, aqueducts, aerial tramways and conveyors, overhead pipelines and similar structures of like function together with their approaches, fenders, pier protection systems, appurtenances and foundations. This definition does not include aerial power transmission lines, tunnels, submerged pipelines, and cables, dams, dikes, dredging and filling in, wharves, piers, breakwaters, bulkheads, jetties and similar structures and works (except as they may be integral features of a bridge and used in its construction, maintenance, operation or removal; or except when they are affixed to the bridge and will have an effect on the clearances provided by the bridge) over which jurisdiction remains with the Department of the Army and the Corps of Engineers under Sections 9 and 10 of the Act of March 3, 1899, as amended (33 U.S.C 401 and 403). A "causeway" is a raised road across water or marshy land, with the water or marshy land on both sides of the road, and which is constructed in or affects navigation, navigable waters and design flood flows.

B. *Combined Structures and Appurtenances.* For purposes of the Acts cited in 1.A.(3) above, a structure serving more than one purpose and having characteristics of either a bridge or causeway, as defined in 4.A., and some other structure, shall be considered as a bridge or causeway when the structure in its entirety, including its appurtenances and incidential features, has or retains the predominant characteristics and purpose of a bridge or causeway. A structure shall not be considered a bridge or causeway when its primary and predominant characteristics and purpose are other than those set forth above and it meets the general definitions above only in a narrow technical

sense as a result of incidental features. This interpretation is intended to minimize the number of instances which will require an applicant for a single project to secure a permit or series of permits from both the Department of Transportation and the Department of the Army for each separate feature or detail of the project when it serves, incidentally to its primary purpose, more than one purpose and has features of either a bridge or causeway and features of some other structure. However, if parts of the project are separable and can be fairly and reasonably characterized or classified in an engineering sense as separate structures, each such structure will be so treated and considered for approval by the agency having jurisdiction thereover.

C. *Alteration of the Character of Bridges and Causeways.* The jurisdiction of the Secretary of Transporation and the Coast Guard over bridges and causeways includes authority to approve the removal of such structures when the owners thereof desire to discontinue their use. If the owner of a bridge or causeway discontinues its use and wishes to remove or alter any part thereof in such a manner that is will lose its character as a bridge or causeway, the Coast Guard will normally require removal of the structure from the waterway in its entirety. However, if the owner of a bridge or a causeway wishes to retain it in whole or in part for use other than for operation and maintenance as a bridge or causeway, the proposed structure will be considered as coming within the jurisdiction of the Corps of Engineers. The Coast Guard will refer requests for such uses to the Corps of Engineers for consideration. The Corps of Engineers agrees to advise the Commandant of the receipt of an application for approval of the conversion of a bridge or causeway to another structure and to provide opportunity for comment thereon. If the Corps of Engineers approves the conversion of a bridge or causeway to another structure, no residual jurisdiction over the structure will remain with the Coast Guard. However, if the Corps of Engineers does not approve the proposed conversion, then the structure remains a bridge subject to the jurisdiction of the Coast Guard.

5. CLOSURE OF WATERWAYS AND RESTRICTION OF PASSAGE THROUGH OR UNDER BRIDGES

Under the statutes cited in Section 1 of this Memorandum of Agreement, the Commandant must approve the clearances to be made available for navigation through or under bridges. It is understood that this duty and authority extends to and may be exercised in connection with the construction, alteration, operation, maintenance and removal of bridges, and includes the power to authorize the temporary restriction of passage through or under a bridge by use of falsework, piling, floating equipment, closure of draws, or any works or activities which temporarily reduce the navigation clearances and design flood flows, including closure of any or all spans of the bridge. Moreover, under the Ports and Waterways Safety Act of 1972. Public Law 92-340, 86 Stat. 424, the Commandant exercises broad powers in waterways to control vessel traffic in areas he determines to be especially hazardous and to establish safety zones or other measures for limited controls or conditional access and activity when necessary to prevent damage to or the destruction or loss of, any vessel bridge, or other structure on or in the navigable waters of the United States. Accordingly, in the event that work in connection with the construction, alteration or repair of a bridge or causeway is of such a nature that for the protection of life and property navigation through or in the vicinity of the bridge or causeway must be temporarily prohibited, the Coast Guard may close that part of the affected waterway while such work is being performed. However, it is also clear that the Secretary of the Army and the Chief of Engineers have the authority, under Section 4 of the Act of August 18, 1894, as amended (33 U.S.C. 1), to prescribe rules for the use, administration and navigation of the navigable waters of the United States. In recognition of that authority, and pursuant to Section 102(c) of the Ports and Waterways Safety Act, the Coast Guard will consult with the Corps of Engineers when any significant restriction of passage through or under a bridge is contemplated to be authorized or a waterway is to be temporarily closed.

6. COORDINATION AND COOPERATION PROCEDURES

A. District Commanders, Coast Guard Districts shall send notices of applications for permits for bridge or causeway construction, modification, or removal to the Corps of Engineers Divisions and Districts in which the bridge or causeway is located.

B. District Engineers, Corps of Engineers, shall send notices of applications for permits for other structures or dredge and fill work to local Coast Guard District Commanders.

C. In cases where proposed structures or modifications of structures do not clearly fall within one of the classifications set forth in paragraph 4.A. above, the application will be forwarded with recommendations of the reviewing officers through channels to the Chief of Engineers and the commandant of the Coast Guard who shall, after mutual consultation, attempt to resolve the questions.

D. If the above procedures fail to produce agreement, the application will be forwarded to the Secretary of the Army and Secretary of Transportation for their determination.

E. The Chief of Engineers and the Commandant, Coast Guard pledge themselves to mutual cooperation and consultation in making available timely information and data, seek uniformity and consistency among field offices, and providing timely and adequate review of all matters arising in connection with the administration of their responsibilities governed by the Acts cited herein.

Dated: March 21, 1973.

C.R. BENDER.

Dated: April 18, 1973.

F. J. CLARKE.

APPENDIX B—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR CONSTRUCTION OR OTHER WORK AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

May 24, 1971.

Pursuant to the authority vested in me by the Act of March 3, 1899, c425, Sections 10 and 14, 30 Stat. 1151, 1152, 33 U.S.C. Sections 403 and 408, and the Act of June 13, 1902, c.1079, Section 1, 32 Stat. 371, 33 U.S.C. Section 565, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits for construction or other work affecting navigable waters of the United States. Except in cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed work on the public interest. In cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers, shall, in exercising such authority, evaluate the impact of the proposed work on navigation and national security. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act.

The Chief of Engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

STANLEY R. RESOR,
Secretary of the Army.

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

Sec.

323.1 General.
323.2 Definitions.
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323.4 Discharges permitted by this regulation.
323.4-1 Discharges prior to effective dates of phasing.
323.4-2 Discharges into certain waters of the United States.
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APPENDIX A—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR THE DISCHARGE OR DREDGED OR FILL MATERIAL INTO NAVIGABLE WATERS

AUTHORITY: 33 U.S.C. 1344.

SOURCE: 42 FR 37144, July 19, 1977, unless otherwise noted.

§ 323.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344) (hereinafter referred to as Section 404). See 33 CFR 320.2(g). Certain discharges of dredged or fill material into waters of the United States are also regulated under other authorities of the Department of the Army. These include dams and dikes in navigable waters of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401; see 33 CFR Part 321) and structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403; see 33 CFR Part 322). A Department of the Army permit will also be required under these additional authorities if they are applicable to activities involv-

ing discharges of dredged or fill material into waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 323.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "waters of the United States" means:[1]

(1) The territorial seas with respect to the discharge of fill material. (The transportation of dredged material by vessel for the purpose of dumping in the oceans, including the territorial seas, at an ocean dump site approved under 40 CFR 228 is regulated by Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413). See 33 CFR Part 324. Discharges of dredged or fill material into the territorial seas are regulated by Section 404.):

(2) Coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including adjacent wetlands;

(3) Tributaries to navigable waters of the United States, including adjacent wetlands (manmade nontidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States under this definition).

(4) Interstate waters and their tributaries, including adjacent wetlands; and

(5) All other waters of the United States not identified in paragraphs (a)(1) through (4) of this section, such as isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce.[2]

The landward limit of jurisdiction in tidal waters, in the absence of adjacent wetlands, shall be the high tide line and the landward limit of jurisdiction and all other waters, in the absence of adjacent wetlands, shall be the ordinary high water mark.

(b) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide

[1] The terminology used by the FWPCA is "navigable waters" which is defined in Section 502(7) of the Act as "waters of the United States including the territorial seas." For purposes of clarity, and to avoid confusion with other Corps of Engineers regulatory programs, the term "waters of the United States" is used throughout this regulation.

[2] In defining the jurisdiction of the FWPCA as the "waters of the United States," Congress, in the legislative history to the Act, specified that the term "be given the broadest constitutional interpretation unencumbered by agency determinations which would have been made or may be made for administrative purposes." The waters listed in paragraphs (a)(1) through (4) fall within this mandate as discharges into those waterbodies may seriously affect water quality, navigation, and other Federal interests; however, it is also recognized that the Federal government would have the right to regulate the waters of the United States identified in paragraph (a)(5) under this broad Congressional mandate to fulfill the objective of the Act: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). Paragraph (a)(5) incorporates all other waters of the United States that could be regulated under the Federal government's Constitutional powers to regulate and protect interstate commerce, including those for which the connection to interstate commerce may not be readily obvious or where the location or size of the waterbody generally may not require regulation through individual or general permits to achieve the objective of the Act. Discharges of dredged or fill material into waters of the United States identified in paragraphs (a)(1) through (4) will generally require individual or general permits unless those discharges occur beyond the headwaters of a river or stream or in natural lakes less than 10 acres in surface area. Discharges into these latter waters and into most of the waters identified in paragraph (a)(5) will be permitted by this regulation, subject to the provisions listed in § 323.4-2(b) unless the District Engineer develops information, on a case-by-case basis, that the concerns for the aquatic environment as expressed in the EPA Guidelines (40 CFR 230) require regulation through an individual or general permit. (See § 323.4-4).

shoreward to the mean high water mark (mean higher high water mark on the Pacific coast) and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR Part 329 for a more complete definition of this term.)

(c) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps marshes, bogs and similar areas.

(d) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(e) The term "natural lake" means a standing body of open water that occurs in a natural depression fed by one or more streams and from which a stream may flow, that occurs due to the widening or natural blockage of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream.

(f) The term "impoundment" means a standing body of open water created by artifically blocking or restricting the flow of a river, stream, or tidal area. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins cooling, or rice growing.

(g) The term "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation, the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(h) The term "high tide line" means a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The mark may be determined by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(i) The term "headwaters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second. [3] The District Engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means.

(j) The term "primary tributaries" means the main stems of tributaries directly connecting to navigable waters of the United States up to their headwaters, and does not include any additional tributaries extending off of the main stems of these tributaries.

(k) The term "dredged material" means material that is excavated or dredged from waters of the United States.

(l) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of

[3] For streams that are dry during long periods of the year, District Engineers, after notifying the Regional Administrator of EPA, may establish the headwater point as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time. The District Engineer shall notify the Regional Administrator of his determination of these headwater points.

dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to Section 402 of the Federal Water Pollution Control Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(m) The term "fill material" means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Federal Water Pollution Control Act Amendments of 1972.

(n) The term "discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary to the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(o) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this regulation and 33 CFR 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR Part 320.

(p) The term "general permit" means a Department of the Army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cause only minimal individual and cumulative adverse environmental impact. A general permit is issued following an evaluation of the proposed category of discharges in accordance with the procedures of this regulation (§ 323.3(c)), 33 CFR Part 325, and a determination that the proposed discharges will be in the public interest pursuant to 33 CFR Part 320.

(q) The term "nationwide permit" means a Department of the Army authorization that has been issued by this regulation in § 323.4 to permit certain discharges of dredged or fill material into waters of the United States throughout the Nation.

§ 323.3 Discharges requiring permits.

(a) *General.* Department of the Army permits will be required for the discharge of dredged or fill material into waters of the United States. Certain discharges specified in §§ 323.4-1, 323.4-2 and 323.4-3 are permitted by this regulation. If a discharge of dredged or fill material is not permitted by this regulation, an individual or general Section 404 permit will be required for the discharge of dredged or fill material into waters of the United States in accordance with the following phased schedule:

(1) Before July 25, 1975, discharges into navigable waters of the United States.

(2) After July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands.

(3) After September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area. (See also § 323.4-

2 for discharges that are permitted by this regulation.)

(4) After July 1, 1977, discharges into all waters of the United States. (See also § 323.4-2 for discharges that are permitted by this regulation.)

(b) *Individual permits.* Unless permitted by this regulation (§§ 323.4-1, 323.4-2 and 323.4-3) or authorized by general permits (§ 323.3(c)), the discharge of dredged or fill material into waters of the United States will require an individual Department of the Army permit issued in accordance with the policies in § 320.4 and procedures in 33 CFR Part 325.

(c) *General permits.* The District Engineer may, after compliance with the other procedues of 33 CFR Part 325, issue general permits for certain clearly described categories of structures or work, including discharges of dredged or fill material; requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories will not require individual permit processing by the procedures of 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that the public interest requires individual review.

(1) District Engineers will include only those activities that are substantially similar in nature, that cause only minimal adverse environmental impact when performed separately, and that will have only a minimal adverse cumulative effect on the environment as categories which are candidates for general permits.

(2) The District Engineer shall include appropriate conditions as specified in Appendix C of 33 CFR Part 325 in each general permit and shall prescribe the following additional conditions:

(i) The maximum quantity of material that may be discharged and the maximum area that may be modified by a single or incidental operation (if applicable);

(ii) A description of the category or categories of activities included in the general permit; and

(iii) The type of water(s) into which the activity may occur.

(3) The District Engineer may require reporting procedures.

(4) A general permit may be revoked if it is determined that the effects of the activities authorized by it will have an adverse impact on the public interest provided the procedures of 33 CFR 325.7 are followed. Following revocation, applications for future activities in areas covered by the general permit shall be processed as applications for individual permits.

(d) *Activities of Federal agencies.* (1) Discharges of dredged or fill material into waters of the United States done by or on behalf of any Federal agency, or instrumentality other than the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and District Engineers will therefore advise Federal agencies and instrumentalities accordingly and cooperate to the fullest extent in the expeditious processing of their applications.

(2) The policy provisions set out in 33 CFR 320.4(j), relating to State or local authorizations, do not apply to discharges of dredged or fill material into waters of the United States undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the appropriate State, interstate and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Federal Water Pollution Control Act, as amended, in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 11752, dated 17 Dec. 73). They are not required, however, to provide certification of compliance with effluent limitations and water-quality standards from State or interstate water pollution control agencies in connection with activities involving discharges into waters of the United States.

(e) *Activities licensed under the Federal Power Act of 1920.* Any part of a structure or work licensed by the Federal Power Commission that involves

the discharge of dredged or fill material into waters of the United States shall require a Department of the Army authorization under this regulation.

§ 323.4 Discharges permitted by this regulation.

(a) *General.* Discharges of dredged or fill material specified in §§ 323.4-1, 323.4-2 and 323.4-3, below are hereby permitted for purposes of Section 404 without further processing under this regulation (individual applications are not needed), except as provided in § 323.4-4 below. Permits may, however, be required under Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322). Sections 323.4-1, 323.4-2, and 323.4-3 do not obviate the requirement to obtain State or local assent required by law for the activities permitted therein.

(b) *Management practices.* In addition to the conditions specified in §§ 323.4-2(b) and 323.4-3(b), the following management practices should be followed, to the maximum extent practicable, in the discharge of dredged or fill material permitted by §§ 323.4-2 and 324.4-3 to minimize the adverse effects of these discharges on the aquatic environment:

(1) Discharges of dredged or fill material into waters of the United States should be avoided or minimized through the use of other practical alternatives;

(2) Discharges in spawning areas during spawning seasons should be avoided;

(3) Discharges should not restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the waters (unless the primary purpose of the fill is to impound waters);

(4) If the discharge creates an impoundment water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, should by minimized;

(5) Discharges in wetlands areas should be avoided;

(6) Heavy equipment working in wetlands should be placed on mats;

(7) Discharges into breeding and nesting areas for migratory waterfowl should be avoided; and

(8) All temporary fills should be removed in their entirety.

§ 323.4-1 Discharges prior to effective dates of phasing.

(a) Discharges of dredged or fill material in waters of the United States that occur before the phase-in dates specified in § 323.3(a)(2) through (4) of this part are hereby permitted for purposes of Section 404, provided the conditions in paragraph (c) of this section, are met.

(b) Discharges of dredged or fill material of less than 500 cubic yards into waters other than navigable waters of the United States (see 33 CFR Part 329) that are part of an activity that was commenced before July 25, 1975, that were completed by January 25, 1976, and that involve a single and complete project and not a number of projects associated with a complete development plan are hereby permitted for purposes of Section 404, provided the conditions in paragraph (c) of this section, are met. The term "commenced" as used herein shall be satisfied if there has been, before July 25, 1975, some discharge of dredged or fill material as a part of the above activity or an entering into of a written contractual obligation to have the dredged or fill material discharged at a designated disposal site by a contractor.

(c) For the purposes of Section 404, the following conditions must have been satisfied for the discharges occurring before the dates specified in paragraphs (a) and (b) of this section:

(1) That the discharge was not located in the proximity of a public water intake;

(2) That the discharge did not contain unacceptable levels of pathogenic organisms in areas used for recreation involving physical contact with the water;

(3) That the discharge did not occur in areas of concentrated shellfish production; and

(4) That the discharge did not destroy or endanger the critical habitat or a threatened or endangered species,

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as identified under the Endangered Species Act.

§ 323.4-2 Discharges into certain waters of the United States.

(a) Discharges of dredged or fill material into the following waters of the United States are hereby permitted for purposes of Section 404, provided the conditions in paragraph (b) below are met:

(1) Non-tidal rivers, streams and their impoundments including adjacent wetlands that are located above the headwaters;

(2) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are fed or drained by a river or stream above the headwaters. In the absence of adjacent wetlands, the surface area of a lake shall be determined at the ordinary high water mark;

(3) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are isolated and not a part of a surface river or stream. In the absence of adjacent wetlands, the surface area of a lake shall be determined at the ordinary high water mark; and

(4) Other non-tidal waters of the United States other than isolated lakes larger than 10 acres (see paragraph (a) (3) of this section), that are not part of a surface tributary system to interstate waters or navigable waters of the United States (see § 323.2(a)(5)).

(b) For purposes of Section 404, the following conditions must be satisfied for any discharge of dredged or fill material in waters described in paragraph (a), above:

(1) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

(2) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(3) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(4) That the discharge will not occur in a component of the National Wild and Scenic Rivers System or in a component of a State wild and scenic river system.

§ 323.4-3 Specific categories of discharges.

(a) The following discharges of dredged or fill material into waters of the United States are hereby permitted for purposes of Section 404, provided the conditions specified in this paragraph and paragraph (b) of this section, are met:

(1) Dredged or fill material placed as backfill or bedding for utility line crossings provided there is no change in preconstruction bottom contours (excess material must be removed to an upland disposal area). A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. (The utility line will require a Section '0 permit if in navigable waters of the United States. See 33 CFR Part 322.);

(2) Material discharged for bank stabilization, provided that the bank stabilization activity is less than 500 feet in length, is necessary for erosion prevention, and is limited to less than an average of one cubic yard per running foot along the bank, provided further that no material for bank stabilization is placed in any wetland area, and provided further that no material is placed in any locality or in any manner so as to impair surface water flow into or out of any wetland area. (This activity will require a Section 10 permit if in navigable waters of the United States. See 33 CFR Part 322.);

(3) Minor road crossing fills including all attendant features both temporary and permanent that are part of a single and complete crossing of a non-tidal waterbody provided that the crossing is culverted or bridged to prevent the restriction of expected high flows and provided further that discharges into any wetlands adjacent to the waterbody do not extend beyond 100 feet on either side of the ordinary high water mark of that waterbody. A "minor road crossing fill" is defined as a crossing that involves the discharge

of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing will require a permit from the U.S. Coast Guard if located in navigable waters of the United States (see 33 U.S.C. 401);

(4) Fill placed incidental to the construction of bridges across tidal waters including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills. Approach fills and causeways are not included in this permit and will require an individual or general Section 404 permit if located in waters of the United States; these fills as well as the bridge itself will also require a permit from the U.S. Coast Guard; and

(5) The repair, rehabilitation or replacement of any previously authorized, currently serviceable fill, or of any currently serviceable fill discharged prior to the requirement for authorization; provided such repair, rehabilitation or replacement does not result in a deviation from the specifications of the original work, and further provided that the fill to be maintained has not been put to uses differing from uses specified for it in any permit authorizing its original construction.

(b) For the purposes of Section 404, the following conditions must be satisfied prior to any discharge of dredged or fill material associated with the activities described above:

(1) That the discharge will not be located in the proximity of a public water supply intake;

(2) That the discharge will not occur in areas of concentrated shellfish production;

(3) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

(4) That the dicharge will not disrupt the movement of those species of aquatic life indigenous to the waterbody;

(5) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(6) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(7) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

§ 323.4-4 Discretionary authority to require individual or general permits.

Nothwithstanding the provisions of §§ 323.4-1, 323.4-2, and 323.4-3, above, the procedures of this regulation and 33 CFR Part 325, including those pertaining to individual and general permits, shall apply to any discharge(s) of dredged or fill material if the District Engineer determines that the concerns of the aquatic environment, as expressed in the guidelines (see 40 CFR Part 230) indicate the need for such action because of individual and/or cumulative adverse impacts to the affected waters. In such cases, he shall take such steps as are necessary to notify persons who would be affected by such action. If the Regional Administrator, EPA, advises the District Engineer that the concerns for the aquatic environment as expressed in the Section 404(b) Guidelines require assertion of jurisdiction under § 323.4-4, and the District Engineer and Division Engineer disagree, the Office of the Chief of Engineers (DAEN-CWO-N and DAEN-CCH) shall be notified for further coordination and resolution with the Administrator.

§ 323.5 Special policies and procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 404 permits. (See Appendix A.) The following additional special procedures shall also be aplicable to the evaluation of permit applications under this regulation:

(a) *EPA Guidelines.* Applications for permits for the discharge of dredged or fill material into waters of the United States will be reviewed in accordance with guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Federal Water Pollution Control Act. (See 40 CFR Part 230.) If the EPA guidelines alone prohibit the designation of a proposed disposal site, the economic impact on navigation and anchorage

of the failure to authorize the use of the proposed disposal site will also be considered in evaluating whether or not the proposed discharge is in the public interest.

(b) *Coordination with EPA.* Prior to actual issuance of permits for the discharge of dredged or fill material in waters of the United States, Corps of Engineers officials will advise appropriate Regional Administrators, EPA, of the intent to issue permits to which EPA has objected, recommended conditions, or for which significant changes are proposed. If the Regional Administrator advises, within fifteen days of the advice of the intent to issue, that he objects to the issuance of the permits, the case will be forwarded to the Chief of Engineers in accordance with 33 CFR 325.11 for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain an analysis of the economic impact on navigation and anchorage that would occur by failing to authorize the use of a proposed disposal site, and whether there are other economically feasible methods or sites available other than those to which the Regional Administrator objects.

APPENDIX A—DELETION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO NAVIGABLE WATERS

MARCH 12, 1973.

Pursuant to the authority vested in me by Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, P.L. 92-500, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the discharge of dredged or filled material into navigable waters at specified disposal sites. The Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed discharge on the public interest. All permits issued shall specify a disposal site for the discharge of the dredged or fill material through the application of guidelines developed by the Administrator of the Environmental Protection Agency and myself. In those cases where these guidelines would prohibit the specification of a disposal site, the Chief of Engineers, in his evaluation of whether the proposed discharge is in the public interest, is authorized also to consider the economic impact on navigation and anchorage which would occur by failing to authorize the use of a proposed disposal site. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to elect the purposes of the above Act, other pertinent laws and any applicable memoranda of understanding between the Secretary of the Army and heads of other governmental agencies.

The Chief of engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

KENNETH E. BELIEU,
Acting Secretary of the Army.

PART 324—PERMITS FOR OCEAN DUMPING OF DREDGED MATERIAL

Sec.
324.1 General.
324.2 Definitions.
324.3 Activities requiring permits.
324.4 Special procedures.

APPENDIX A—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR THE TRANSPORTATION OF DREDGED MATERIAL FOR THE PURPOSE OF DUMPING IT INTO OCEAN WATERS

AUTHORITY: 33 U.S.C. 1413.

SOURCE: 42 FR 37147, July 19, 1977, unless otherwise noted.

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the transportation of dredged material by vessel for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228 pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413), (hereinafter referred to as Section 103). See 33 CFR 320.2(h). Activities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require Department of the Army permits under Section 10 of the River and Harbor Act of 1899 (33

U.S.C. 403) for the dredging in navigable waters of the United States. Applicants for Department of the Army permits under this part should also refer to 33 CFR Part 322 to satisfy the requirements of Section 10.

§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(b) The term "dredged material" means any material excavated or dredged from navigable waters of the United States or ocean waters.

(c) The term "transport" or "transportation" refers to the carriage and related handling of dredged material by a vessel.

§ 324.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required for the transportation of dredged material for the purpose of dumping it in ocean waters.

(b) *Activities of Federal agencies.* (1) The transportation of dredged material for the purpose of dumping in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers are subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and District Engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Engineers that involve the transportation of dredged material for dumping in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to State or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the substantive State, interstate, and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and related laws in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 11752, dated 17 Dec. 73.) They are not required, however, to obtain and provide certification of compliance with effluent limitations and water-quantity standards from State or interstate water pollution control agencies in connection with activities involving discharges into ocean waters.

§ 324.4 Special procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 103 permits. (See Appendix A.) The following additional procedures shall also be applicable under this regulation.

(a) *Public notice.* For all applications for Section 103 permits, the District Engineer will issue a public notice which shall contain, in addition to the information specified in 33 CFR 325.3, the following information:

(1) The location of the proposed disposal site and its physical boundaries;

(2) A statement as to whether the site has been designated for use by the Administrator, EPA, pursuant to Section 102(c) of the Act;

(3) If the proposed disposal site has not been designated by the Administrator, EPA, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(4) A brief description of known dredged material discharges at the proposed disposal site;

(5) Existence and documented effects of other authorized dumpings that have been made in the dumping area (e.g., heavy metal background reading and organic carbon content);

(6) An estimate of the length of time during which disposal will continue at the proposed site;

(7) Characteristics and composition of the dredged material; and

(8) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

(b) *Evaluation.* Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities. In making this evaluation, criteria established by the Administrator, EPA, pursuant to Section 102 of the Marine Protection Research and Sanctuaries Act of 1972, as amended, shall be applied including an evaluation of the need for the ocean dumping and including the availability of alternatives to ocean dumping. Where ocean dumping is determined to be necessary, the District Engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to Section 102(c) of the Act. See 40 CFR Parts 220 to 229.

(c) *EPA review.* If the Regional Administrator, EPA, advises the District Engineer that the proposed dumping will comply with the criteria the District Engineer shall complete his evaluation of the Section 103 application under this regulation and 33 CFR Parts 320 and 325. If, however, the Regional Administrator advises the District Engineer that the proposed dumping will not comply with the criteria, the District Engineer will proceed as follows.

(1) The District Engineer shall determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the District Engineer shall evaluate them in accordance with 33 CFR Parts 320, 322, 323, 325 and this regulation, as appropriate.

(2) If the District Engineer makes a determination that there is no economically feasible alternative method or site available, he shall so advise the Regional Administrator of his intent to issue the permit setting forth his reasons for such determination.

(d) *EPA objection.* If the Regional Administrator advises, within 15 days of the notice of the intent to issue, that he still objects to the issuance of the permit, the case will be forwarded to the Chief of Engineers, for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain, in addition to the analysis required by 33 CFR 325.11, an analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(e) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with 40 CFR 225.4.

Appendix A—Delegation of Authority To Issue or Deny Permits for the Transportation of Dredged Material for the Purpose of Dumping it into Ocean Waters

March 12, 1973.

Pursuant to the authority vested in me by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, 86 Stat. 1052, Pub. L. 92-532, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters. The Chief of Engineers and his authorized representatives shall, in exercising such authority, evaluate the impact of the proposed dumping on the public interest. No permit shall be issued unless a determination is made that the proposed dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. In making this de-

termination, those criteria for ocean dumping established by the Administrator of the Environmental Protection Agency pursuant to Section 102(a) of the above Act which relate to the effects of the proposed dumping shall be applied. In addition, based upon an evaluation of the potential effect which a permit denial will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Chief of Engineers or his authorized representatives, in evaluating the permit application, shall make an independent determination as to the need for the dumping, other possible methods of disposal, and appropriate locations for the dumping. In considering appropriate disposal sites, recommended sites designated by the Administrator of the Environmental Protection Agency pursuant to Section 102(c) of the above Act will be utilized to the extent feasible. Prior to issuing any permit, the Chief of Engineers or his authorized representatives shall first notify the Administrator of the Environmental Protection Agency or his authorized representative of his intention to do so. In any case in which the Administrator or his authorized representative disagrees with the determination of the Chief of Engineers or his authorized representative as to compliance with the criteria established prusuant to Section 102(a) of the above Act relating to the effects of the dumping or with the restrictions established pursuant to Section 102(c) of the above Act relating to critical areas, the determination of the Administrator or his authorized representative shall prevail. If, in any such case, the Chief of Engineers or his Director of Civil Works finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in noncompliance with such criteria or restrictions, he shall so certify and request that I seek a waiver from the Administrator of the Environmental Protection Agency of the specific requirements involved. Unless the administrator of the Environmental Protection Agency grants a waiver, the Chief of Engineers or his authorized representatives shall not issue a permit which does not comply with such criteria and restrictions. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act, other pertinent laws, and any applicable memoranda of understanding between the Secretary of the Army and the heads of other governmental agencies.

The Chief of Engineers and his authorized representative shall exercise the authority herby delegated subject to such conditions as I or my authorized representative may from time to time impose.

KENNETH E. BELIEU,
Acting Secretary of the Army.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

Sec.

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325.11 Reports.

APPENDIX A—PERMIT FORM
APPENDIX B—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF THE ARMY

AUTHORITY: 33 U.S.C. 401 et seq.: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 42 FR 37149, July 19, 1977, unless otherwise noted.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this regulation (Part 325) apply to any form of Department of the Army permit. Special procedures and additional information are contained in Parts 320 through 324. This part is arranged in the basic timing sequence used by the Corps of Engineers in processing Department of the Army permits.

(b) *Application form.* Any person proposing to undertake any activity requiring Department of the Army authorization as specified in 33 CFR Parts 321 through 324 must apply for a permit to the District Engineer in charge of the District where the proposed activity is to be performed. Applications for permits must be prepared in accodance with instructions in Engineer Pamphlet 1145-2-1, "A Guide for Applicants," utilizing the prescribed application form (ENG Form 4345). The form and pamphlet may be obtained from the District Engineer having jurisdiction over the waterway in which the propose activity

will be located. Local variations of the application form for purposes of facilitating coordination with State and local agencies may be used.

(c) *Content of application.* (1) Generally, the application must include a complete description of the proposed activity including necessary drawings, sketches or plans; the location, purpose and intended use of the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and the approvals required by other Federal, interstate, State or local agencies for the work, including all approvals received or denials already made.

(2) If the activity involves dredging in waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(3) If the activity includes the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the application must include the source of the material; a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. (See Part 324 for additional information requirements on ocean dumping applications.) Certification under Section 401 of the Federal Water Pollution Control Act is required for such discharges into water of the United States.

(4) If the activity includes the construction of a fill or pile or float-supported platform, the project description must include the use and specific structures to be erected on the fill or platform.

(d) *Additional information.* In addition to the information indicated in paragraph (c) of this section, the applicant will be required to furnish such additional information as the District Engineer may deem necessary to assist him in his evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites, as may be necessary for the preparation of the Environmental Assessment or Environmental Impact Statement (see § 325.4).

(e) *Signature of application.* The application must be signed by the person who desires to undertake the proposed activity; however, the application may be signed by a duly authorized agent if accompanied by a statement by that person designating the agent and agreeing to furnish, upon request, supplemental information in support of the application. In either case, the signature of the applicant will be understood to be an affirmation that he possesses the authority to undertake the activity proposed in his application, except where the lands are under the control of the Corps of Engineers, in which cases the District Engineer will coordinate the transfer of the real estate and the permit action. When the application is submitted by an agent, the application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area.

(f) *Fees.* Fees are required for permit applications under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and Sections 9 and 10 of the River and Harbor Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commerical or industrial in nature and is an support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the work is non-commerical in nature and provides personal benefits that have no connection with a commercial enterprise. The final decision as to basis for fee (commercial vs. noncommerical) shall be solely the responsibility of the District Engineer. No fee will be charged if the applicant withdraws his application at any time prior to issuance of the permit and/or if his application is denied. Collection of the fee will be deferred until the applicant is notified by the District Engineer that a public interest review has

been completed and that the proposed activity has been determined to be in the public interest. Upon receipt of this notification the applicant will forward a check or money order to the District Engineer, made payable to the Treasurer of the United States. The permit will then be issued upon receipt of the application fee. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require a permit will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions or general permits. Agencies or instrumentalities of Federal, State or local governments will not be required to pay any fee in connection with the applications for permits. This fee structure will be reviewed from time to time.

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received, the District Engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and obtain from the applicant any additional information he deems necessary for further processing.

(2) When all required information has been provided, the District Engineer will issue a public notice as described in § 325.3, below, unless specifically exempted by other provisions of this regulation.

(3) The District Engineer shall consider all comments received in response to the public notice (see § 325.3) in his subsequent actions on the permit application. Receipt of the comments will be acknowledged and they will be made a part of the official file on the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another Federal agency, the District Engineer may seek the advice of that agency. The applicant must be given the opportunity to furnish the District Engineer his proposed resolution or rebuttal to all objections from Government agencies and other substantive adverse comments before final decision will be made on the application.

(4) The District Engineer shall prepare an Environmental Assessment on all applications. The Environmental Assessment shall be dated, signed, and placed in the record and shall include the expected environmental impacts of the proposal. Where the District Engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the Environmental Assessment. In those cases requiring an Environmental Impact Statement (EIS), the draft EIS may serve as the Environmental Assessment. Where an EIS is not prepared, the Environmental Assessment will include a statement that the decision on the application is not a major Federal action significantly affecting the quality of the human environment.

(5) The District Engineer shall also evaluate the proposed application to determine the need for a public hearing pursuant to 33 CFR Part 327.

(6) After all above actions have been completed, the District Engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a Findings of Fact on all applications to support his determination. The Findings of Fact shall include the District Engineer's views on the probable effect of the proposed work on the public interest including conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), if applicable, and the conclusions of the District Engineer. The Findings of Fact shall be dated, signed, and included in the record prior to final action on the application. Where the District Engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the Findings of Fact. If a permit is warranted, the District Engineer will determine

the conditions and duration which should be incorporated into the permit. In accordance with the authorities specified in § 325.8, the District Engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final Environmental Impact Statement, if prepared, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in the format prescribed in § 325.11. Notice that the application has been forwarded to higher headquarters will be furnished the applicant and to any Federal agency expressing an interest in the application. Such notice shall not divulge the District Engineer's recommendations. In those cases where the application is forwarded for decision in the format prescribed in § 325.11, the report will serve as the Findings of Fact.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason for denial. If the final decision is to issue the permit, the issuing official will forward two copies of the draft permit to the applicant for signature accepting the conditions of the permit. The applicant will return both signed copies to the issuing official who then signs and dates the permit. The permit is not valid until signed by the issuing official. Final action on the permit application is the signature on the letter notifying the applicant of the denial of his application or signature of the issuing official on the authorizing document.

(8) The District Engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. This list will be distributed to all persons who received any of the public notices listed.

(9) If the applicant fails to respond within 45 days to any request or inquiry of the District Engineer, the District Engineer may advise the applicant by certified letter that his application will be considered as having been withdrawn unless the applicant responds thereto within thirty days of the date of the letter.

(b) *Procedures for particular types of permit situations.* (1) If the District Engineer determines that water quality certification for the proposed activity is necessary under the provisions of the Federal Water Pollution Control Act, he shall so notify the applicant and obtain from him either the appropriate certification or a copy of his application for such certification. The District Engineer may issue the public notice of the application jointly with the certifying agency if arragements for such joint notices have been approved by the Division Engineer. When the activity may affect the waters of another State, a copy of the certification will be forwarded to the Regional Administrator of EPA who shall determine if the proposed activity may affect the quality of the waters of any State or States other than the State in which the work is to be performed. If he needs supplemental information in order to make this determination, the Regional Administrator may request it from the District Engineer who shall obtain it from the applicant and forward it to the Regional Administrator. The Regional Administrator shall, within thirty days of receipt of the application, certification and supplemental information, notify the affected State, the District Engineer, and the applicant in the event such a second State may be affected. The second State then has sixty days to advise the District Engineer that it objects to the issuance of the permit on the basis of the effect on the quality of its waters and to request a hearing. No authorization will be granted until required certification has been obtained or has been waived. Waiver is deemed to occur if the certifying agency fails or refuses to act on a request for certification within a reasonable period of time after receipt of such request. The request for certification must be made in accordance with the regulations of the certifying agency. In determining whether or not a waiver period has commenced, the District Engineer will verify that the certifying agency has received a valid request for certification. Three months shall generally be considered

to be a reasonable period of time. If, however, special circumstances identified by the District Engineer require that action on an application be taken within a more limited period of time, the District Engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly if it appears that circumstances may reasonably require a period of time longer than three months, the District Engineer may afford the certifying agency up to one year to provide the required certification before determining that a waiver has occurred. District Engineers shall check with the certifying agency at the end of the allotted period of time before determining that a waiver has occurred.

(2) If the proposed activity is to be undertaken in a State operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management Act (see 33 CFR 320.3(b)), the District Engineer shall proceed as follows:

(i) If the applicant is a Federal agency, and the application involves a Federal activity in or affecting the coastal zone or a Federal development project in the coastal zone, the District Engineer shall forward a copy of the public notice to the agency of the State responsible for reviewing the consistency of Federal activities. The Federal agency applicant shall be responsible for complying with the Coastal Zone Management Act's directives for ensuring that Federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved coastal zone management programs. (See 15 CFR Part 930.) If the State coastal zone agency objects to the proposed Federal activity on the basis of its inconsistency with the State's approved coastal zone management program, the District Engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the Coastal Zone Management Act for resolving such disagreements.

(ii) If the applicant is not a Federal agency and the application involves an activity affecting the coastal zone, the District Engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved State coastal zone management program. Upon receipt of the certification, the District Engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the State coastal zone agency and request its concurrence of objection. The District Engineer can issue the public notice of the application jointly with the State agency if arrangements for such joint notices have been approved by the Division Engineer. If the State agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the District Engineer shall not issue the permit until the State concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the Coastal Zone Management Act or is necessary in the interest of national security. If the State agency fails to concur or object to a certification statement within six months of the State agency's receipt of the certification statement, State agency concurrence with the certification statement shall be conclusively presumed.

(3) If the proposed activity involves any property listed or eligible for listing in the National Register of Historic Places (which is published in its entirety in the FEDERAL REGISTER annually in February with addenda published each month), the District Engineer will proceed in accordance with 33 CFR Part 305.

(4) If the proposed activity consists of the dredging of an access channel and/or berthing facility associated with an authorized Federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the Federal project to the maximum extent feasible. Separate notice, hear-

ing, and Environmental Impact Statement will not be required for activities so included and coordinated; and the public notice issued by the District Engineer for these Federal and associated non-Federal activities will be the notice of intent to issue permits for those included non-Federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the Federal project unless special considerations applicable to the proposed activity are identified. (See § 322.5(a).)

(5) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of structures or artificial islands on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390: Attention, Code N512 and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(ii) If the activity involves the construction of structures to enhance fish propagation (fish havens) along the coasts of the United States, to Defense Mapping Agency Hydographic Center and National Ocean Survey as in (i), above, and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iii) If the activity involves the erection of an aerial transmission line across a navigable water of the United States, to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, reference C322.

(iv) If the activity is listed in paragraphs (b)(5) (i), (ii), or (iii), of this section, or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(c) *Emergency procedures.* An "emergency" is a situation which would result in an unacceptable hazard to life or severe loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under required procedures. In such cases the District Engineer will explain the circumstance and recommend special procedures in writing to the Chief of Engineers, ATTN: DAEN-CWO-N. The Chief of Engineers, upon consultation with the Secretary of the Army or his authorized representative, will instruct the District Engineer as to further processing of the application.

(d) *Timing of processing of applications.* In view of the extensive coordination with other agencies and the public and the study of all aspects of proposed activities required by the above procedures, applicants must allow adequate time for the processing of their applications. The District Engineer will be guided by the following time limits for the indicated steps in processing permit applications:

(1) Public notice should be issued within fifteen days of receipt of all required information from the applicant, unless joint notice with State agencies is to be used.

(2) The receipt of comments as a result of the public notice should not extend beyond thirty days from the date of the notice. However, if unusual circumstances warrant, the District Engineer may extend the comment period up to a maximum of seventy-five days.

(3) The District Engineer should either send notice of denial to the applicant or issue the draft permit to the applicant for acceptance and signature, or forward the application to higher headquarters within thirty days of one of the following whichever is latest: Closing of the public notice comment period with no objections received; receipt of notice of withdrawal of objections; completion of coordination following receipt of applicant's rebuttal of objections; closing of the record of a public hearing; or expiration of the waiting period following the filing of the final Environmental Impact Statement with CEQ.

§ 325.3 Public notice.

(a) *General.* The Public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable

impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature of the activity to generate meaningful comments. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name and address of the applicant;

(3) The location of the proposed activity;

(4) A brief description of the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and a description of the type, composition and quantity of materials to be discharged or dumped and means of conveyance. See also 33 CFR Part 324 for additional information required on ocean dumping public notices;

(5) a plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;

(6) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(7) A list of other government authorizations obtained or requested, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(8) A statement concerning a preliminary determination of the need for and/or availability of an Environmental Impact Statement;

(9) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest, including environmental values; and

(10) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing, within which interested parties may express their views concerning the permit application.

(b) *Evaluation factors.* A paragraph describing the various factors on which decisions are based during evaluation of a permit application shall be included in every public notice.

(1) Except as provided in paragraph (b)(4) of this section, the following will be included:

> The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

(2) If the activity involves the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the public notice shall also indicate that the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Federal Water Pollution Control Act (40 CFR Part 230) or of the criteria established under authority of Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 228), as appropriate. See also 33 CFR Part 324.

(3) If the activity includes the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the following statement will also be included in the public notice:

> Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

(4) In cases involving construction of fixed structures or artificial islands on Outer Continental Shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security."

(c) *Distribution of public notices.* (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate State agencies, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commission, and to any other interested party. If in the judgment of the District Engineer the proposal may result in substantial public interest, the public notice (without drawings) may be published for five consecutive days in the local newspaper, and the applicant shall reimburse the District Engineer for the costs of publication. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the Field Representative of the Secretary of the Interior, the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the State agency responsible for fish and wildlife resources, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addresses in appropriate cases as follows:

(i) If the activity involves structures or dredging along the shores of the sea or Great Lakes, to the Coastal Engineering Research Center, Washington, D.C. 20016.

(ii) If the activity involves construction of fixed structures or artificial islands on the Outer Continental Shelf or in the territorial seas, to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, D.C. 20310; the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390, Attention, Code N512; and the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(iii) If the activity involves the construction of structures to enhance fish propagation along the Atlantic, Pacific, and Gulf coasts, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iv) If the activity involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity is in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, D.C. 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the application. A copy of the public notice with the list of the addressees to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the District Engineer may request their comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constituent of himself, the District Engineer will inform the member of Congress of the final decision.

(d) *General permit notices (RCS: DAEN-CWO-52).* For purposes of performing a nationwide analysis of the

effectiveness of the general permit program, Division offices will submit "Public Notices on General Permits" reports (RCS: DAEN-CWO-52) by COB on the 15th day, following the end of each quarter, to HQDA (DAEN-CWO-N) Washington, D.C. 20314. Said reports will be in the form of a letter listing the public notices published during the previous month to announce proposals or to finalize issuances of general permits; copies of the public notices are to be made inclosures to the reports. Negative reports will be submitted if no general permit actions have taken place in the Division during the reporting period.

§ 325.4 Environmental impact statements.

(a) *General.* Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) requires all Federal agencies, with respect to major Federal actions significantly affecting the quality of the human environment, to submit to the President's Council on Environmental Quality a detailed statement on:

(1) The environmental impact of the proposed actions.

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented.

(3) Alternatives to the proposed action.

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. The District Engineer must determine whether such an Environmental Impact Statement (EIS) is required in connection with each permit application.

(b) *EIS procedures.* In addition to the procedures required by 33 CFR 209.410 (ER 1105-2-507), the following special procedures apply to the processing of permits involving the preparation of an EIS.

(1) The District Engineer, at the earliest practicable time prior to the issuance of the public notice, shall make a preliminary assessment of impacts of the project should it be approved and make a preliminary determination as to whether the quality of the human environment would be significantly affected. This preliminary assessment will normally be based on experience with sin ilar type activities performed in the past. A statement of the District Engineer's preliminary determination shall be included in the public notice. This preliminary determination will be reconsidered as additional information is developed.

(2) If the District Engineer's final determination after consideration of all additional information developed (including responses to the public notice) is that the proposed work will not significantly affect the quality of the human environment, the District Engineer's determination shall be documented, dated, and placed in the record as his Environmental Assessment (see § 325.2(a)(4)).

(3) At such time as the District Engineer believes that a permit may be warranted but that the proposed activity would significantly affect the quality of the human environment, he will require the applicant to furnish any additional information that the District Engineer considers necessary to allow his preparation of an EIS. The applicant should also be advised at this time that there is no assurance that favorable action will ultimately be taken on his application. Additionally, if the District Engineer has previously announced a preliminary determination that no EIS would be required, he shall issue a supplemental public notice to advise the public of the changed determination. If the applicant is unable to furnish certain information considered by the District Engineer to be necessary for the EIS, the District Engineer may, afer obtaining written approval from the Division Engineer, charge the applicant pursuant to 31 U.S.C. 483(a) for those extraordinary expenses incurred by the Government in developing the information. All money so collected shall be paid into the Treasury of the United States as miscellaneous receipts. Otherwise the costs of the preparation and distribution of the EIS itself shall be borne by the Federal Government. In those cases when the determination has been made that

an EIS will be required, the District Engineer shall consider inviting public comments as to specific factors of concern which should be addressed in the draft EIS. Upon preparation of the draft EIS, a public notice shall be issued summarizing the facts of the case and announcing the availability of the draft EIS. A copy of that notice shall be furnished to all recipients of the draft EIS including CEQ. If a public hearing is to be held pursuant to § 325.2(a)(5), the hearing may be held anytime after completion of the draft EIS.

(4) If another agency is the lead agency as defined by the CEQ guidelines (40 CFR 1500.7(b)) the District Engineer will coordinate with that agency to insure that the resulting EIS adequately describes the impact of the activity which is subject to Corps permit authority. That previously prepared EIS will be referenced in the public notice announcing the permit application and a statement included that the effects of the proposed activity on the environment as outlined therein will be carefuly considered in the evaluation of the permit application.

(c) *Public notice on EIS filing.* The 30-day wait period required by the National Environmental Policy Act for issuing a permit for which an EIS has been prepared begins with notation in the FEDERAL REGISTER that the FEIS has been filed with CEQ or on the date of delivery to U.S. Postal Service facilities for mailing of copies of the FEIS to agencies, groups, and individuals on the project mailing list, whichever date is later. In order to notify the interested public of their opportunity to comment on the FEIS, the District Engineer shall issue a public notice when the filing notation has been published in the FEDERAL REGISTER to all parties receiving the original application notice or draft EIS and to all others who have expressed an interest in the application. The public notice should include:

(1) A brief summary of application (applicant, work, date of public notice, date of draft EIS release, date of public hearing, if held);

(2) Opportunity to comment to the District Engineer on the FEIS until the deadline date projected by the 30-day wait period;

(3) A statement that the comments received on the FEIS will be evaluated and considered in arriving at the final decision on the application; and

(4) Information on how interested parties can obtain or have access to the FEIS.

§ 325.5 Forms of authorization.

(a) *General.* (1) Department of the Army authorizations under this regulation shall be in the form of an individual permit, general permit, or letter of permission, as appropriate. The basic format shall be ENG Form 1721, Department of the Army Permit (Appendix A).

(2) While the general conditions included in ENG Form 1721 are normally applicable to all permits, some may not apply to certain authorizations (e.g., after-the-fact situations where work is completed, or situations in which the permittee is a Federal agency) and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest.

(b) *Letters of permission.* In those cases subject to Section 10 of the River and Harbor Act of 1899 in which, in the opinion of the District Engineer, the proposed work is minor, will not have significant impact on environmental values, and should encounter no opposition, the District Engineer may omit the publishing of a public notice and authorize the work by a letter of permission. However, he will coordinate the proposal with all concerned fish and wildlife agencies, Federal and State, as required by the Fish and Wildlife Coordination Act. The letter of permission will not be used to authorize the discharge of dredged or fill material into waters of the United States nor the transportation of dredged material for purposes of dumping it in ocean waters. The letter of permission will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority (i.e., 33 U.S.C. 403), any limitations on the work, a construction time limit and a

requirement for a report of completed work. A copy of the general conditions from ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) *General permits.* The District Engineer may, after compliance with the other procedures of this regulation, issue general permits for certain clearly described categories of structures or work, including discharges of dredged or fill material, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories that are authorized by such general permits do not have to be further authorized by the procedures of this regulation unless the District Engineer determines, on a case-by-case basis, that the public interest requires.

(d) *Section 9 permits.* Permits for structures under Section 9 of the River and Harbor Act of 1899 will be drafted during review procedures at Department of the Army level.

(e) *Nationwide permits.* Nationwide permits mean Department of the Army authorizations that have been issued by the regulations for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or general permit.

§ 325.6 Duration of autorizations.

(a) *General.* Department of the Army authorization may authorize both the work and the resulting use. Authorizations continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) *Structures.* Authorizations for the existence of a structure or other activity of a permanent nature are usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the authorization will be of limited duration with a definite expiration date. Except as provided in paragraph (e) of this section, permits for the discharge of dredged material in the waters of the United States or for the transportation of dredged material for the purpose of dumping it in ocean waters will be of limited duration with a definite expiration date.

(c) *Works.* Authorizations for construction work or other activity will specify time limits for accomplishing the work or activity. The time limits will specify a date by which the work must be started, normally one year from the date of issuance, and a date by which the work must be completed. The dates will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. An authorization for work or other activity will automatically expire if the permittee fails to request an extension or revalidation.

(d) *Extensions of time.* Extensions of time may be granted by the District Engineer for authorizations of limited duration, or for the time limitations imposed for starting or completing the work or activity. The permittee must request the extension and explain the basis of the request, which will be granted only if the District Engineer determines that an extension is in the general public interest. Request for extensions will be processed in accordance with the regular procedures of § 325.2, including issuance of a public notice, except that such processing is not required where the District Engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued and that the work is proceeding essentially in accordance with the approved plans and conditions.

(e) *Periodic maintenance.* If the authorized work includes periodic maintenance dredging, and expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after his evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR Parts 320 through 325. In such cases, the District Engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the re-

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quirements of the regulation and 33 CFR Parts 320 through 324. If the permittee desires to continue maintenance dredging beyond the expiration date, he must request a revalidation of that portion of his permit which authorized the maintenance dredging. The request must be made to the District Engineer 6 months prior to the expiration date, and include full description of the proposed methods of dredging and disposal of dredged materials. The District Engineer will process the request for revalidation in accordance with the standard procedures including the issuance of a public notice describing the authorized work to be maintained and the proposed methods of maintenance.

§ 325.7 Modification, suspension or revocation of authorizations.

(a) *General.* The District Engineer may reevaluate the circumstance and conditions of a permit either on his own motion or as the result of periodic progress inspection, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the general public interest. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the activity authorized have changed since the permit was issued, extended or revalidated, and the continuing adequacy of the permit conditions; any significant objections to the activity authorized by the permit which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with § 325.2, and not as modifications under this paragraph.

(b) *Modification.* The District Engineer, as a result of revaluation of the circumstances and conditions of a permit, may determine that protection of the general public interest requires a modification of the terms or conditions of the permit. In such cases, the District Engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the District Engineer will give the permittee written notice of the modification, which will then become effective on such date as the District Engineer may establish, which in no event shall be less than ten days from its date of issuance. In the event a mutual agreement cannot be reached by the District Engineer and the permittee, the District Engineer will proceed in accordance with paragraph (c) of this section, if immediate suspension is warranted. In cases where immediate suspension is not warranted but the District Engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a hearing. The modification will become effective on the date set by the District Engineer which shall be at least ten days after receipt of the notice unless a hearing is requested within that period. If the permittee fails or refuses to comply with the modification, the District Engineer will proceed in accordance with 33 CFR Part 326.

(c) *Suspension.* The District Engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the general public interest. The District Engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop all previously authorized activities. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may request a hearing within 10 days of receipt of notice of the suspension to present information in this matter. If a hearing is requested the procedures prescribed in 33 CFR Part 327 will be followed. After the completion of the hearing (or within a reasonable period of time

after issuance of the notice to the permittee that the permit has been suspended if no hearing is requested), the District Engineer will take action to reinstate the permit, modify the permit, or recommend revocation of the permit in accordance with paragraph (d) of this section.

(d) *Revocation.* Following completion of the suspension procedures in paragraph (c) of this section, if revocation of the permit is recommended, the District Engineer will prepare a report of the circumstances and forward it together with the record of the suspension proceedings to DAEN-CWO-N. The Chief of Engineers may, prior to deciding whether or not to revoke the permit, afford the permittee the opportunity to present any additional information not made available to the District Engineer at the time he made the recommendation to revoke the permit including, where appropriate, the means by which he intends to comply with the terms and conditions of the permit. The permittee will be advised in writing of the final decision.

§ 325.8 Authority to issue or deny authorizations.

(a) *General.* Except as otherwise provided in this regulation, the Secretary of the Army subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for construction or other work in or affecting navigable waters of the United States pursuant to Sections 10 and 14 of the Act of March 3, 1899, and Section 1 of the Act of June 13, 1902. He also has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for the discharge of dredged or fill material in waters of the United States pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 or for the transportation of dredged material for the purpose of dumping it into ocean waters pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits pursuant to Section 9 of the River and Harbor Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) *District Engineer's authority.* District Engineers are authorized to issue in accordance with this regulation permits and letters of permission which are subject to such special conditions as are necessary to protect the public interest in the waters of the United States or ocean waters pursuant to Sections 10 and 14 of the River and Harbor Act of March 3, 1899; Section 1 of the River and Harbor Act of June 13, 1902; Section 404 of the Federal Water Pollution Control Act Amendments of 1972; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases in which there are no known substantive objections to the proposed work or activity or in which objections have been resolved to the satisfaction of the District Engineer. Unless otherwise precluded by this regulation. District Engineers may issue permits over an unresolved objection of another Federal agency if that agency indicates to the District Engineer that it does not desire to refer the application to a higher level of authority for review. It is essential to the legality of a permit that it contain the name of the district Engineer as the issuing officer. However, the permit need not be signed by the District Engineer, in person; but may be signed for and in behalf of him by whoever he designates. District Engineers shall deny permits when required State or local authorization and/or certification has been denied or when a State has objected to a required certification of compliance with its coastal zone management program and the Secretary of Commerce has not reviewed the action and reached a contrary finding. A District Engineer may also deny any permit if he determines that the proposed activity is not in the public interest provided the referral requirements of § 325.8(d) below are not applicable. In such cases the Findings of Fact should be in the general format required for reports under § 325.11 and must conclusively justify a denial decision. All other permit applications including those cases in

§ 325.7 (c) and (d) of this part will be referred to Division Engineers. District Engineers are also authorized to add, modify, or delete special conditions in permits, except for those conditions which have been imposed by higher authority, and to suspend permits according to the procedures of § 325.7(c).

(c) *Division Engineer's authority.* Division Engineers will review, attempt to resolve outstanding matters, and evaluate all permit applications referred by District Engineers. Division Engineers may authorize the issuance or denial of permits pursuant to Sections 10 and 14 of the River and Harbor Act of March 3, 1899; Section 1 of the River Harbor Act of June 13, 1902, Section 404 of the Federal Water Pollution Control Act Amendments of 1972; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and the inclusion of conditions to those permits as may be necessary to protect the public interest in waters of the United States or ocean waters in accordance with the policies cited in this regulation. Except as provided in paragraph (d) of this section, if the Division Engineer determines that issuance of a permit with or without conditions is in the public interest, but there is continuing objection to the issuance of the permit by another Federal agency, he shall advise the regional representative of that Federal agency of his intent to issue the permit The Division Engineer shall not proceed with the issuance of a permit if, within 15 days after the date of this notice of intent to issue a permit, an authorized representative of that Federal agency indicates to the Division Engineer in writing that he wishes to bring his concerns to the departmental level and has departmental concurrence to do so. In such cases, the proposed permit will be forwarded to higher authority for resolution. thereafter, a permit will be issued only pursuant to and in accordance with instructions from such higher authority. Every effort should be made to resolve differences at the Division Engineer level before referring the matter to higher authority.

(d) *Referral to the Chief of Engineers.* Division Engineers will refer to the Chief of Engineers the following cases:

(1) When it is proposed to issue a permit and there are unresolved objections from another Federal agency which must be handled under special procedures specified in statutes or Memoranda of Understanding which thereby preclude final resolution by the Division Engineer;

(2) When the recommended decision is contrary to the stated position of the Governor of the State in which the work is to be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When the Chief of Engineers requests the case be forwarded for decision;

(5) When the proposed activity would affect the baseline used for determination of the limits of the territorial sea; and

(6) When Section 9 of the River and Harbor Act of 1899 authority is involved.

§ 325.9 Supervision and enforcement.

(a) *Inspection and monitoring.* District Engineers will assure that authorized activities are conducted and executed in conformance with approved plans and other conditions of the permits. Appropriate inspections should be made on timely occasions during performance of the activity and appropriate notices and instructions given permittees to insure that they do not depart from the approved plans. Revaluation of permits to assure compliance with its purposes and conditions will be carried out as provided in § 325.7. If there are approved material departures from the authorized plans, the District Engineer will require the permittee to furnish corrected plans showing the activity as actually performed.

(b) *Non-compliance.* Where the District Engineer determines that there has been non-compliance with the terms or conditions of a permit, he should first contact the permittee and attempt to resolve the problem. If a mutually agreeable resolution cannot be reached, a written demand for com-

pliance will be made. If the permittee has not agreed to comply within 5 days of receipt of the demand, the District Engineer will issue an immediately effective notice of suspension in accordance with § 325.7(c) and consider initiation of appropriate legal action.

(c) *Surveillance.* For purposes of inspection or permitted activities and for surveillance of the waters of the United States for enforcement of the permit authorities the District Engineer will use all means at his disposal. All Corps of Engineers employees will be instructed to observe and report all activities in waters of the United States which would require permits. The assistance of members of the public and personnel of other interested Federal, State, and local agencies to observe and report such activities will be encouraged. To facilitate this surveillance, the District Engineer will, in appropriate cases, require a copy of ENG Form 4336 to be posted conspicuously at the site of authorized activities and will make available to all interested persons information on the scope of authorized activities and the conditions prescribed in the authorizations. Furthermore, significant actions taken under § 325.7 will be brought to the attention of those Federal, State, and local agencies and other persons who express particular interest in the affected activity. Surveillance in ocean waters will be accomplished primarily by the Coast Guard pursuant to section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(d) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activity in waters of the United States normally will be paid by the Federal Government in accordance with the provisions of section 6 of the River and Harbor Act of March 3, 1905 (33 U.S.C. 417) unless daily supervision or other unusual expenses are involved. In such unusual cases, and after approval by the Division Engineer, the permittee will be required to bear the expense of inspections in accordance with the conditions of his permit; however, the permittee will not be required or permitted to pay the United States inspector either directly or through the District Engineer. The inspector will be paid on regular payrolls or service vouchers. The District Engineer will collect the cost from the permittee in accordance with following:

(1) At the end of each month the amount chargeable for the cost of inspection pertaining to the permit will be collected from the permittee and will be taken up on the statement of accountability and deposited in a designated depository to the credit of the Treasurer of the United States, on account of reimbursement of the appropriation from which the expenses of the inspection were paid.

(2) If the District Engineer considers such a procedure necessary to insure the United States against loss through possible failure of the permittee to supply the necessary funds in accordance with paragraph (d)(1) of this section, he may require the permittee to keep on deposit with the District Engineer at all times an amount equal to the estimated cost of inspection and supervison for the ensuing month, such deposit preferably being in the form of a certified check, payable to the order of Treasurer of the United States. Certified checks so deposited will be carried in a special deposit account (guaranty for inspection expenses) and upon completion of the work under the permit the funds will be returned to the permittee provided he has paid the actual cost of inspection.

(3) On completion of work under a permit, and the payment of expenses by the permittee without protest, the account will be closed, and outstanding deposits returned to the permittee. If the account is protested by the permitte, it will be referred to the Division Engineer for approval before it is closed and before any deposits are returned to the permittee.

(e) *Bonds.* If the permitted activity includes restoration of the waterway to its original conditions, or if the issuring official has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest in the waterway, he may require the permittee to post a bond of sufficient amount to indemnify the government

against any loss as a result of corrective action it might take.

§ 325.10 Publicity.

The District Engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in navigable waters or ocean waters. Whenever the District Engineer becomes aware of plans being developed by either private or public entities who might require permits in order to implement the plans, he will advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Similarly when the District Engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

§ 325.11 Reports.

The report of a District Engineer on an application for a permit requiring action by the Division Engineer or by the Chief of Engineers will be in a letter form with the application and all pertinent comments, records, photographs, maps, and studies including the final Enivronmental Impact Statement if prepared, as inclosures. The inclosures for all cases referred to the Chief of Engineers will be in duplicate. If an EIS has been prepared, the report shall not be forwarded until expiration of the 30-day comment period following filing of the final EIS and shall address any comments received on the final EIS. The following items will be included or discussed in the report:

(a) Name of applicant.

(b) Location, character and purpose of proposed activity, including a description of any wetlands involved.

(c) Applicable statutory authorities and administrative determinations conferring Corps of Engineers regulatory jurisdiction.

(d) Other Federal, State, and local authorizations obtained or required and pending.

(e) Date of public notice and public hearings, if held, and summary of objections offered with comments of the District Engineer thereon. The comments should explain the objections and not merely refer to inclosed letters.

(f) Views of State and local authorities.

(g) Views of District Engineer concerning probable effect of the proposed work on:

(1) Navigation, present and prospective.

(2) Harbor lines, if established.

(3) Flood heights, drift and flood damage protection.

(4) Beach erosion or accretion.

(5) Fish and Wildlife.

(6) Water Quality.

(7) Aesthetics.

(8) Historic values.

(9) Recreation.

(10) Economy.

(11) Water supply.

(12) Energy needs.

(13) Land use classification and coastal zone mangement plans.

(h) Other pertinent remarks, such as:

(1) Extent of public and private need.

(2) Appropriate alternatives.

(3) Extent and permanence of beneficial and/or detrimental effects.

(4) Probable impact in relation to cumulative effects created by other activities.

(i) A copy of the environmental assessment or the Environmental Impact Statement. If an EIS is prepared, a summary of comments received on the final EIS together with the District Engineer's response to those comments.

(j) A discussion of conformity with the guidelines published for the discharge of dredged or fill material in waters of the United states (40 CFR Part 230) or the dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), as applicable.

(k) Conclusions.

(l) Recommendations including any proposed special conditions.

APPENDIX A—PERMIT FORM

Application No. _____
Name of Applicant _____
Effective Date _____
Expiration Date (if applicable) _____

DEPARTMENT OF THE ARMY

Permit

Referring to written request dated———— for a permit to:

( ) Perform work in or affecting navigable waters of the United States upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbor Act of March 3, 1899 (33 U.S.C. 403);

( ) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, Pub. L. 92-500);

( ) Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; Pub. L. 92-532);

_____

_____

(Here insert the full name and address of the permittee.)

is hereby authorized by the Secretary of the Army:

to _____

_____

_____

_____

_____

_____

(Here describe the proposed structure or activity, and its intended use. In the case of an application for a fill permit, describe the structures, if any proposed to be erected on the fill. In the case of an application for the discharge of dredged or fill material into waters of the United States or the transportation for discharge in ocean waters of dredged material, describe the type and quantity of material to be discharged.)

in _____

_____

_____

_____

_____

_____

_____

Here to be named the ocean, river, harbor, or waterway concerned.)

at _____

_____

_____

_____

_____

_____

_____

(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings; give file number or other definite identification marks). subject to the following conditions:

I. General conditions: (a) That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

(b) That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant

to the Federal Water Pollution Control Act of 1972 (Pub. L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

(c) That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

(d) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

(e) That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

(f) That the permittee agrees that it will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

(g) That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

(h) That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

(i) That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

(j) That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevent to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

(k) That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

(l) That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

(m) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

(n) That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

(o) That if the activity authorized herein is not started on or before ——— day of ———, 19—, (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before ——— day of ———, 19—, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

(p) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

(q) That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition S hereof, he must restore the area to a condition satisfactory to the District Engineer.

(r) That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

(s) That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

(t) That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreeement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: Here list conditions relating specifically to the proposed structure or work authorized by this permit. The following Special Conditions will be applicable when appropriate:

Structures In or Affecting Navigable Waters of the United States

(a) That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

(b) That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

(c) That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

(d) That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

(e) Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

Maintenance Dredging

(a) That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for ——— years from the date of issuance of this permit (ten years unless otherwise indicated);

(b) That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

Discharges of Dredged or Fill Material Into Waters of the United States

(a) That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

(b) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(c) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(d) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

Dumping of Dredged Material Into Ocean Waters

(a) That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

(b) That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

_____

(Permittee)

_____

(Date)

By authority of the Secretary of the Army:

_____

(District Engineer)

_____

(Date)

Transferee hereby agrees to comply with the terms and conditions of this permit.

_____

(Transferee)

_____

(Date)

APPENDIX B—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF THE ARMY

In recognition of the responsibilities of the Secretary of the Army under sections 10 and 13 of the Act of March 3, 1899 (33 U.S.C. 403 and 407), relating to the control of dredging, filling, and excavation in the navigable waters of the United States, and the control of refuse in such waters, and the interrelationship of those responsibilities with the responsibilities of the Secretary of the Interior under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-666c), and the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.), relating to the control and prevention of water pollution in such waters and the conservation of the Nation's natural resources and related environment, including fish and wildlife and recreational values therein; in recognition of our joint responsibilities under Executive Order No. 11288 to improve water quality through the prevention, control, and abatement of water pollution from Federal and federally licensed activities; and in recognition of other provisions of law and policy, we, the two Secretaries, adopt the following policies and procedures:

POLICIES

1. It is the policy of the two Secretaries that there shall be full coordination and cooperation between their respective Departments on the above responsibilities at all organizational levels, and it is their view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers shall coordinate with the Regional Directors of the Secretary of the Interior on fish and wildlife, recreation, and pollution problems associated with dredging, filling, and excavation operations to be conducted under permits issued under the 1899 Act in the navigable waters of the United States, and they shall avail themselves of the technical advice and assistance which such Directors may provide.

2. The Secretary of the Army will seek the advise and counsel of the Secretary of the Interior on difficult cases. If the Secretary of the Interior advises that proposed operations will unreasonably impair natural resources or the related environment, including the fish and wildlife and recreational values thereof, or will reduce the quality of

such waters in violation of applicable water quality standards, the Secretary of the Army in acting on the request for a permit will carefully evaluate the advantages and benefits of the operations in relation to the resultant loss or damage, including all data presented by the Secretary of the Interior, and will either deny the permit or include such conditions in the permit as he determines to be in the public interest, including provisions that will assure compliance with water quality standards established in accordance with law.

PROCEDURES FOR CARRYING OUT THESE POLICIES

1. Upon receipt of an application for a permit for dredging, filling, excavation, or other related work in navigable waters of the United States, the District Engineers shall send notices to all interested parties, including the appropriate Regional Directors of the Federal Water Pollution Control Administration, the United States Fish and Wildlife Service, and the National Park Service of the Department of the Interior, and the appropriate State conservation, resources, and water pollution agencies.

2. Such Regional Directors of the Secretary of the Interior shall immediately make such studies and investigations as they deem necessary or desirable, consult with the appropriate State agencies, and advise the District Engineers whether the work proposed by the permit applicant, including the deposit of any material in or near the navigable waters of the United States, will reduce the quality of such waters in violation of applicable water quality standards or unreasonably impair natural resources or the related environment.

3. The District Engineer will hold public hearings on permit applications whenever response to a public notice indicates that hearings are desirable to afford all interested parties full opportunity to be heard on objections raised.

4. The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington headquarters.

5. The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and he shall include his analysis thereof, for the purpose of obtaining the Department of Interior's comments prior to final determination of the issues.

6. In those cases where the Chief of Engineers and the Under Secretary are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

7. If in the course of operations within this understanding, either Secretary finds its terms in need of modification, he may notify the other of the nature of the desired changes. In that event the Secretaries shall within 90 days negotiate such amendment as is considered desirable or may agree upon termination of this understanding at the end of the period.

Dated: July 13, 1967.

STEWART L. UDALL,
Secretary of the Interior.

Dated: July 13, 1967.

STANLEY RESOR,
Secretary of the Army.

PART 326—ENFORCEMENT

Sec.
326.1 Purpose.
326.2 Discovery of unauthorized activity in progress.
326.3 Investigation.
326.4 Legal action.
326.5 Processing after-the-fact applications.

AUTHORITY: 33 U.S.C. 401 et seq., 1344, 1413.

SOURCE: 42 FR 37158, July 19, 1977, unless otherwise noted.

§ 326.1 Purpose.

This regulation prescribes the policy, practice, and procedures to be followed by the Corps of Engineers in connection with activities requiring Department of the Army permits that are performed without prior authorization.

§ 326.2 Discovery of unauthorized activity in progress.

When the District Engineer becomes aware of any unauthorized activity which is still in progress, he shall immediately issue a cease and desist order to all persons responsible for

and/or involved in the performance of the activity. If appropriate, the District Engineer may also order interim protective measures to be taken in order to protect the public interest.

§ 326.3 Investigation.

The District Engineer shall commence an immediate investigation of all unauthorized activities brought to his attention to ascertain the facts surrounding the activity. In making this investigation, the District Engineer shall solicit the views of the Regional Administrator of the Environmental Protection Agency, the Regional Director of the U.S. Fish and Wildlife Service, and the Regional Director of the National Marine Fisheries Service, and other appropriate Federal, State, and local agencies. he shall also request the persons involved in the unauthorized activity to provide appropriate information on the activity to assist him in his evaluation and in recommending the course of action to be taken. The District Engineer shall evaluate the information and views developed during this investigation in conjunction with the appropriate factors and criteria that pertain to the particular unauthorized activity as cited in 33 CFR Parts 320, 321, 322, 323, and 324, and the guidance contained in § 326.4, below. Following this evaluation, the District Engineer shall formulate recommendations as to the appropriate administrative and/or legal action to be taken.

§ 326.4 Legal action.

(a) District engineers shall be guided by the following policies in determining whether an unauthorized activity requires appropriate legal action:

(1) *Criminal action.* Criminal action is considered appropriate when the facts surrounding an unauthorized activity reveal the necessity for punitive action and/or when deterrence of future unauthorized activities in the area is considered essential to the establishment or maintenance of a viable permit program.

(2) *Civil action.* Civil action is considered appropriate when the preliminary evaluation of the unauthorized activity reveals that: (i) Restoration is in the public interest and attempts to secure voluntary restoration have failed, or (ii) the unauthorized activity is in the public interest but must be altered or modified by judicial order because attempts to secure voluntary compliance have failed, or (iii) a civil penalty under Section 309 of the FWPCA is warranted.

(b) Preparation of case. If the District Engineer determines that legal action is appropriate, he shall prepare a litigation report which shall contain an analysis of the data and information obtained during his investigation and a recommendation of appropriate civil and criminal action. In those cases where the analysis of the facts developed during his investigation (when made in conjunction with the appropriate factors and criteria specified in 33 CFR Parts 320, 321, 322, 323, and 324) leads to the preliminary conclusion that removal of the unauthorized activity is in the public interest, the District Engineer shall also recommend restoration of the area to its original or comparable condition.

(c) Referral to local U.S. Attorney. Except as provided in paragraph (d), District Engineers are authorized to refer the following cases directly to the local U.S. Attorney.

(1) All unauthorized structures or work in or affecting navigable waters of the United States that fall exclusively within the purview of Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322) for which a criminal fine or penalty under Section 12 of that Act (33 U.S.C. 406) is considered appropriate.

(2) All civil actions involving small unauthorized structures, such as piers, which the District Engineer determines are: (i) Not in the public interest and therefore must be removed, or (ii) are in the public interest but must be altered or modified by judicial order, because attempts to secure voluntary compliance have failed.

(3) All violations of section 301 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1311) involving the unauthorized discharge of dredged or fill material into the waters of the United States where the District Engineer determines, with the concurrence of the Regional Administrator, that civil and/or criminal

action pursuant to Section 309 of the FWPCA is appropriate.

(4) All cases for which a temporary restraining order and/or preliminary injunction is appropriate following noncompliance with a cease and desist order.

Information copies of all letters of referral shall be forwarded to the Chief of Engineers, ATTN: DAEN-CCK, and the Chief Pollution Control Section, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

(d) Referral to Office, Chief of Engineers. District Engineers shall prepare and forward a litigation report to the Office, Chief of Engineers, ATTN: DAEN-CCK, for all other cases not identified in paragraph (c) in which civil and/or criminal action is considered appropriate, including:

(1) All cases involving significant questions of law or fact;

(2) All cases involving discharges of dredged or fill material into waters of the United States that are not interstate waters or navigable waters of the United States, or part of a surface tributary system to these waters;

(3) All cases involving recommendations for substantial or complete restoration;

(4) All cases involving violations of Section 9 of the River and Harbor Act of 1899; and

(5) All cases involving violations of the Marine Protection, Research and Sanctuaries Act of 1972.

(e) If the District Engineer refers a case to the local U.S. Attorney or if criminal and/or civil action is instituted against the responsible person for any unauthorized activity, the District Engineer shall not accept for processing any application for a Department of the Army permit until final disposition of the referral action and/or all judicial proceedings, including the payment of all prescribed penalties and fines and/or completion of all work ordered by the court. Thereafter, the District Engineer may accept an application for a permit; provided, that with respect to any judicial order requiring partial or total restoration of an area, the District Engineer, if so ordered by the court, shall supervise this restoration effort and may allow the responsible persons to apply for a permit for only that portion of the unauthorized activity for which restoration has not been so ordered.

§ 326.5 Processing after-the-fact applications.

In those cases in which the District Engineer determines that the unauthorized activity does not warrant legal action, the following procedures shall be followed.

(a) Precessing and evaluation of applications for after-the-fact authorizations for activities undertaken without the required Department of the Army permits will in all other respects follow the standard policies and procedures of 33 CFR Parts 320 through 325. Thus, authorization may still be denied in accordance with the policies and procedures of those regulations.

(b) Where after-the-fact authorization in accordance with this paragraph is determined to be in the public interest, the standard permit form for the activity will be used, omitting inappropriate conditions, and including whatever special conditions the District Engineer may deem appropriate to mitigate or prevent undesirable effects which may have occurred or might occur.

(c) Where after-the-fact authorization is not determined to be in the public interest, the notification of the denial of the permit will prescribe any corrective actions to be taken in connection with the work already accomplished, including restoration of those areas subject to denial, and establish a reasonable period of time for the applicant to complete such actions. The District Engineer, after denial of the permit, will again consider whether civil and/or criminal action is appropriate in accordance with § 326.4.

(d) If the applicant declines to accept the proposed permit conditions, or fails to take corrective action prescribed in the notification of denial, or if the District Engineer determines, after denying the permit application, that legal action is appropriate, the matter will be referred to the Chief of Engineers. ATTN: DAEN-CCK, with recommendations for appropriate action.

PART 327—PUBLIC HEARINGS

Sec.
327.1 Purpose.
327.2 Applicability.
327.3 Definitions.
327.4 General policies.
327.5 Presiding officer.
327.6 Legal adviser.
327.7 Representation.
327.8 Conduct of hearings.
327.9 Filing of transcript of the public hearing.
327.10 Powers of the Presiding Officer.
327.11 Public notice.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 42 FR 37159, July 19, 1977, unless otherwise noted.

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed Department of the Army permit action or Federal project as defined in § 327.3 below including those held pursuant to Section 404 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1344) and Section 103 of the Marine Protection Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all Divisions and Districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed Department of the Army permit action, or Federal project, and which affords to the public the opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) Permit action, as used herein, means the review of an application for a permit pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), Section 404 of the FWPCA (33 U.S.C. 1344), the Outer Continental Shelf Act (43 U.S.C. 1333(f)), and Section 103 of the MPRSA of 1972, as amended (33 U.S.C. 1413), or the modification or revocation of any Department of the Army permit. (See 33 CFR 325.7.)

(c) Federal project means a Corps of Engineers project (work or activity of any nature for any prupose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters subject to Section 404 of the FWPCA (33 U.S.C. 1344), or Section 103 of the MPRSA, as amended (33 U.S.C. 1413; and 33 CFR 209.145). (This regulation supersedes all references to public meetings in 33 CFR 209.145.)

§ 327.4 General policies.

(a) A public hearing will be held in connection with the consideration of a Department of the Army permit application under Section 404 of the FWPCA or Section 103 of the MPRSA, or a Federal project whenever a public hearing will assist in making a decision on such permit application or Federal project. In addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7.)

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a Department of the Army permit application under Section 404 of the FWPCA or Section 103 of the MPRSA or on a Federal project, that a public hearing be held to consider the material matters in issue in the permit application or Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the District Engineer shall promptly set a time and place for the public hearing, and give due notice thereof, as prescribed in § 327.11 below. Requests for a public hearing under this paragraph shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The District Engi-

neer will make such a determination in writing, and communicate his reasons therefor to all requesting parties.

(c) In cases involving the evaluation of a Department of the Army permit application only under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), public hearings will be held upon written request whenever the District Engineer determines that there is sufficient public interest to warrant such action. Among the instances warranting public hearings are general public opposition to a proposed work, Congressional requests or requests from responsible local authorities, or controversial cases involving significant environmental issues.

(d) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(e) In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the interested public.

§ 327.5 Presiding officer.

(a) The District Engineer, in whose District a matter arises, shall normally serve as the Presiding Officer. When the District Engineer is unable to serve, he may designate the Deputy District Engineer as such Presiding Officer. In any case, he may request the Division Engineer to designate another Presiding Officer. In cases of unusual interest, the Chief of Engineers reserves the power to appoint such person as he deems appropriate to serve as the Presiding Officer.

(b) The Presiding Officer in each case shall establish a hearing file. The hearing file shall include a copy of any permit application or permits and supporting data, any public notices issued in the case, the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to the proposed action, the hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal adviser.

In each public hearing, the District Counsel or his designee shall serve as legal adviser to the Presiding Officer in ruling upon legal matters and issues that may arise.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, and may be represented by counsel, or by other representatives.

§ 327.8 Conduct of hearings.

(a) Hearings shall be conducted by the Presiding Officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision. Any person may present written statements for the hearing file prior to the time the hearing file is closed to public submissions, and may present proposed findings and recommendations. The Presiding Officer shall afford participants an opportunity for rebuttal.

(b) The Presiding Officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(c) Cross-examination of witnesses shall not be permitted.

(d) All public hearings shall be reported verbatim. Copies of the transcripts of proceedings may be purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate District Engineer.

(e) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the Presiding Officer for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

(f) At any hearing, the Presiding Officer shall make an opening statement, outlining the purpose of the hearing and prescribing the general procedures

to be followed. The Presiding Officer shall afford participants an opportunity to respond to his opening statement.

(g) The Presiding Officer shall allow a period of 10 days after the close of the public hearing for submission of written comments. After such time has expired, unless such period is extended by the Presiding Officer or the Chief of Engineers for good cause, the hearing file shall be closed to additional public written comments.

(h) In appropriate cases, the District Engineer may participate in joint public hearings with other Federal or State agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or State agency is required to allow cross-examination in its public hearing, the District Engineer may still participate in the joint public hearing but shall not require cross examination as a part of his participation.

(i) The procedures in paragraphs (d), (f) and (g) of this section may be waived by the Presiding Officer in appropriate cases.

§ 327.9 Filing of transcript of the public hearing.

Where the Presiding Officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as Presiding Officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the Presiding Officer and the transcript of the public hearing and evidence submitted there shall in such cases be fully considered by the initial action authority in making his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Powers of the Presiding Officer.

Presiding Officers shall have the following powers:

(a) To regulate the course of hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under which the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice shall provide for a period of not less than 30 days following the date of public notice during which time interested parties may prepare themselves for the hearing, except that, in cases of public necessity, a shorter time may be allowed. Notice shall also be given to all Federal agencies affected by the proposed action, and to State and local agencies having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and published in newspapers of general circulation.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft Environmental Impact Statement or Environmental Assessment.

PART 328—HARBOR LINES

Sec.

328.1 Purpose and scope.
328.2 Applicability.
328.3 References.
328.4 Definition.
328.5 The purpose of harbor lines.

Sec.

328.6 Establishment or modification of harbor lines.

AUTHORITY: 33 U.S.C. 401 et seq.

SOURCE: 42 FR, 37161, July 19, 1977, unless otherwise noted.

§ 328.1 Purpose and scope.

This regulation prescribes the policy, practice and procedures concerning harbor lines and any work in navigable waters of the United States shoreward of such lines.

§ 328.2 Applicability.

This regulation is applicable to all Corps of Engineers activities and installations having Civil Works responsibilities.

§ 328.3 References.

(a) Section 11 of the River and Harbor Act of 1899 (33 U.S.C. 404).

(b) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(c) Pub. L. 91-190, the National Environmental Policy Act of 1969.

§ 328.4 Definition.

The term "harbor line(s)" is used here in its generic sense. It includes types of harbor lines frequently referred to by other names, including, for example, pierhead lines and bulkhead lines.

§ 328.5 The purpose of harbor lines.

(a) Under previous policies, practices and procedures, riparian owners could erect open pile structures or undertake solid fill construction shoreward of established harbor lines without obtaining a permit under 33 U.S.C. 403. This was a matter of great concern, particularly in cases involving long established harbor lines, since all factors affecting the public interest may not have been taken into account at the time the lines were established. Accordingly, under previous policies, practices and procedures there was the danger that work shoreward of existing harbor lines could be undertaken without appropriate consideration having been given to the impact which such work may have on the environment and without a judgment having been made as to whether or not the work was, on balance, in the public interest.

(b) In order to assure that the public interest will be considered and protected in all instances, all existing and future harbor lines were declared on 27 May 1970 (33 CFR 209.150) to be guidelines for defining, with respect to the impact on navigation interests alone, the offshore limits of open pile structures (pierhead lines) or fills (bulkhead lines). A permit under 33 USC 403 is required in each case for any work which is commenced shoreward of existing or future harbor lines after 27 May 1970. Applications for permits for work in navigable waters of the United States shoreward of harbor lines shall be filed and processed in accordance with the provisions of 33 CFR Part 325. No permit is required for work completed or commenced prior to 27 May 1970 in conformance with existing harbor line authority.

§ 328.6 Establishment or modification of harbor lines.

Applications for the establishment of new harbor lines or the modification of existing harbor lines will be processed in a manner similar to applications for permits for work in navigable waters of the United States. Public notice concerning any such application will be sent to all parties known or believed to be interested in the application and a copy of the notice will be posted in post offices or other public places in the area. Public notices, apart from providing information relative to any harbor line application, shall make it clear that harbor lines are guidelines for defining, with respect to the impact on navigation interest alone, the offshore limits of open pile structures or fills and that the establishment of a harbor line carries with it no presumption that individual applications for permits to undertake work shoreward of any harbor line will be granted. Public hearings will be held in connection with applications for the establishment or modification of harbor lines whenever there appears to be sufficient public interest to justify the holding of a public hearing or when responsible

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Federal, State or local authorities, including Members of the Congress, request that a hearing be held and it is likely that information will be presented at the hearing that will be of assistance in determining whether the harbor line should be established or modified. District Engineers will forward all recommendations concerning the establishment or modification of harbor lines through the appropriate Division Engineer to the Office of the Chief of Engineers DAEN-CWO-N. No new harbor lines will be established and no existing harbor lines will be modified unless specifically authorized by the Chief of Engineers.

PART 329—DEFINITION OF NAVIGABLE WATERS OF THE UNITED STATES

Sec.

329.1 Purpose.
329.2 Applicability.
329.3 General policies.
329.4 General definitions.
329.5 General scope of determinations.
329.6 Interstate or foreign commerce.
329.7 Intrastate or interstate nature of waterway.
329.8 Improved or natural conditions of waterbody.
329.9 Time at which commerce exists or determination is made.
329.10 Existence of obstructions.
329.11 Geographic and jurisdictional limits of rivers and lakes.
329.12 Geographic and jurisdictional limits of oceanic and tidal waters.
329.13 Geographic limits: Shifting boundaries.
329.14 Determinations of navigability.
329.15 Inquiries regarding determinations.
329.16 Use and maintenance of lists of determinations.

AUTHORITY: 33 U.S.C. 401 et seq.

SOURCE: 42 FR 37161, July 19, 1977, unless otherwise noted.

§ 329.1 Purpose.

This regulation defines the term "navigable waters of the United States" as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning "navigable waters."

§ 329.2 Applicability.

This regulation is applicable to all Corps of Engineers Districts and Divisions having Civil Works responsibilities.

§ 329.3 General policies.

Precise definitions of "navigable waters" or "navigability" are ultimately dependent on judicial interpretation, and cannot be made conclusively by administrative agencies. However, the policies and criteria contained in this regulation are in close conformance with the tests used by the Federal Courts and determinations made under this regulation are considered binding in regard to the activities of the Corps of Engineers.

§ 329.4 General definition.

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

§ 329.5 General scope of determinations.

The several factors which must be examined when making a determination whether a waterbody is a navigable water of the United States are discussed in detail below. Generally, the following conditions must be satisfied:

(a) Past, present, or potential presence of interstate or foreign commerce;

(b) Physical capabilities for use by commerce as in paragraph (a) of this section; and

(c) Defined geographic limits of the waterbody.

§ 329.6 Interstate or foreign commerce.

(a) *Nature of Commerce: type, means, and extent of use.* The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the waterbody's capability

of use by the public for purposes of transportation of commerce which is the determinative factor, and not the time, extent or manner of that use. As discussed in § 329.9 of this part, it is sufficient to establish the potential for commercial use at any past, present, or future time. Thus, sufficient commerce may be shown by historical use of canoes, bateaux, or other frontier craft, as long as that type of boat was common or well-suited to the place and period. Similarly, the particular items of commerce may vary widely, depending again on the region and period. The goods involved might be grain, furs, or other commerce of the time. Logs are a common example; transportation of logs has been a substantial and well-recognized commercial use of many navigable waters of the United States. Note, however, that the mere presence of floating logs will not of itself make the river "navigable"; the logs must have been related to a commercial venture. Similarly, the presence of recreational craft may indicate that a waterbody is capable of bearing some forms of commerce, either presently, in the future, or at a past point in time.

(b) *Nature of commerce: interstate and intrastate.* Interstate commerce may of course be existent on an intrastate voyage which occurs only between places within the same State. It is only necessary that goods may be brought from, or eventally be destined to go to, another State. (For purposes of this regulation, the term "interstate commerce" hereinafter includes "foreign commerce" as well.)

§ 329.7 Intrastate or interstate nature of waterway.

A waterbody may be entirely within a state, yet still be capable of carrying interstate commerce. This is especially clear when it physically connects with a generally acknowledged avenue of interstate commerce, such as the ocean or one of the Great Lakes, and is yet wholly within one state. Nor is it necessary that there be a physically navigable connection across a state boundary. Where a waterbody extends through one or more states, but substantial portions, which are capable of bearing interstate commerce, are located in only one of the states, the entirety of the waterway up to the head (upper limit) of navigation is subject to Federal jurisdiction.

§ 329.8 Improved or natural conditions of the waterbody.

Determinations are not limited to the natural or original condition of the waterbody. Navigability may also be found where artificial aids have been or may be used to make the waterbody suitable for use in navigation.

(a) *Existing improvements: artificial waterbodies.* (1) An artificial channel may often constitute a navigable water of the United States, even though it has been privately developed and maintained, or passes through private property. The test is generally as developed above, that is, whether the waterbody is capable of use to transport interstate commerce. Canals which connect two navigable waters of the United States and which are used for commerce clearly fall within the test, and themselves become navigable. A canal open to navigable waters of the United States on only one end is itself navigable where it in fact supports interstate commerce. A canal or other artificial waterbody that is subject to ebb and flow of the tide is also a navigable water of the United States.

(2) The artificial waterbody may be a major portion of a river or harbor area or merely a minor backwash, slip, or turning area. (See § 329.12(b).)

(3) Private ownership of the lands underlying the waterbody, or of the lands through which it runs, does not preclude a finding of navigability. Ownership does become a controlling factor if a privately constructed and operated canal is not used to transport interstate commerce nor used by the public; it is then not considered to be a navigable water of the United States. However, a private waterbody, even though not itself navigable, may so affect the navigable capacity of nearby waters as to nevertheless be subject to certain regulatory authorities.

(b) *Non-existing improvements, past or potential.* A waterbody may also be considered navigable depending on the feasibility of use to transport inter-

state commerce after the construction of whatever "reasonable" improvements may potentially be made. The improvements need not exist, be planned, nor even authorized; it is enough that potentially they could be made. What is a "reasonable" improvement is always a matter of degree; there must be a balance between cost and need at a time when the improvement would be (or would have been) useful. Thus, if an improvement were "reasonable" at a time of past use, the water was therefore navigable in law from that time forward. The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvements; those which may be entirely reasonable in a thickly populated, highly developed industrial region may have been entirely to costly for the same region in the days of the pioneers. The determination of reasonable improvement is often similar to the cost analyses presently made in Corps of Engineers studies.

§ 329.9 Time at which commerce exists or determination is made.

(a) *Past use.* A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part, retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions. Nor does absence of use because of changed economic conditions affect the legal character of the waterbody. Once having attained the character of "navigable in law," the Federal authority remains in existence, and cannot be abandoned by administrative officers or court action. Nor is mere inattention or ambiguous action by Congress an abandonment of Federal control. However, express statutory declarations by Congress that described portions of a waterbody are nonnavigable, or have been abandoned, are binding upon the Department of the Army. Each statute must be carefully examined since Congress often reserves the power to amend the Act, or assigns special duties of supervision and control to the Secretary of the Army or Chief of Engineers.

(b) *Future or potential use.* Navigability may also be found in a waterbody's susceptibility for use in its ordinary condtion or by reasonable improvement to transport interstate commerce. This may be either in its natural or improved condition, and may thus be existent although there has been no actual use to date. Nonuse in the past therefore does not prevent recognition of the potential for future use.

329.10 Existence of obstructions.

A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway in its original condition might have had substantial obstructions which were overcome by frontier boats and/or portages, and nevertheless be a "channel" for commerce, even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes. However, the question is ultimately a matter of degree, and it must be recognized that there is some point beyond which navigability could not be established.

§ 329.11 Geographic and jurisdictional limits or rivers and lakes.

(a) *Jurisdiction over entire bed.* Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark.

(1) The "ordinary high water mark" on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(2) Ownership of a river or lake bed or of the lands between high and low water marks will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody.

(b) *Upper limit of navigability.* The character of a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may, under some of the tests described above, be at some point yet further upstream.

§ 329.12 Geographic and jurisdictional limits of oceanic and tidal waters.

(a) *Ocean and coastal waters.* The navigable waters of the United States over which Corps of Engineers regulatory jurisdiction extends include all ocean and coastal waters within a zone three geographic (nautical) miles seaward from the coast line. Wider zones are recognized for special regulatory powers, such as those exercised over the Outer Continental Shelf.

(1) *Coast line defined.* Generally, where the shore directly contacts the open sea, the line on the shore reached by the ordinary low tides comprises the coast line from which the distance of three geographic miles is measured. On the Pacific coast the line of mean lower low water is used. The line has significance for both domestic and international law (in which it is termed the "baseline"), and is subject to precise definitions. Special problems arise when offshore rocks, islands, or other bodies exist, and the line may have to be drawn to seaward of such bodies.

(2) *Shoreward limit of jurisdiction.* Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. However, on the Pacific coast, the line reached by the mean of the higher high waters is used. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(b) *Bays and estuaries.* Regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by paragraph (a)(2) of this section) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered "navigable in law," but only so far as the area is subject to inundation by the mean high waters. The relevant test is therefore the presence of the mean high tidal waters, and not the general test described above, which generally applies to inland rivers and lakes.

§ 329.13 Geographic limits: Shifting boundaries.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable waters of the United States. Thus, gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterbody which also change the shoreline boundaries of the navigable waters of the United States. However, an area will remain "navigable in law," even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. For example, shifting sand bars within a river or estuary remain part of the navigable water of the United States, regardless that they may be dry at a particular point in time.

§ 329.14 Determinations of navigability.

(a) *Effect on determinations.* Although conclusive determinations of navigability can be made only by Federal Courts, those made by Federal agencies are nevertheless accorded substantial weight by the courts. It is therefore necessary that when jurisdictional questions arise, District personnel carefully investigate those waters which may be subject to Federal regulatory jurisdiction under the guidelines set out above, as the resulting determination may have substantial impact upon a judicial body. Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law.

(b) *Procedures of determination.* A determination whether a waterbody is a navigable water of the United States will be made by the Division Engineer, and will be based on a report of findings prepared at the District level in accordance with the criteria set out in this regulation. Each report of findings will be prepared by the District Engineer, accompanied by an opinion of the District Counsel, and forwarded to the Division Engineer for a final determination. Each report of findings will be based substantially on applicable portions of the format in paragraph (c) of this section.

(c) Suggested format of report of findings:

(1) Name of waterbody ———————
(2) Tributary to ———————
(3) Physical characteristics ———————
(i) Type: (river, bay slough, estuary, etc.)—
(ii) Length ———————
(iii) Approximate discharge volumes:
Maximum ———————
Minimum ———————
Mean ———————
(iv) Fall per mile ———————
(v) Extent of tidal influence ———————
(vi) Range between ordinary high and ordinary low water ———————
(vii) Description of improvements to navigation not listed in subparagraph (5) below ———————
(4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interstate commerce ———————
(5) Authorized projects ———————
(i) Nature, condition, and location of any improvements made under projects authorized by Congress———————
(ii) Description of projects authorized but not constructed ———————
(iii) List of known survey documents or reports describing the waterbody ———————
(6) Past or present interstate commerce ———————
(i) General types, extent, and period in time ———————
(ii) Documentation if necessary———————
(7) Potential use for interstate commerce, if applicable ———————
(i) If in natural condition ———————
(ii) If improved ———————
(8) Nature of jurisdiction known to have been exercised by Federal agencies if any —
(9) State or Federal court decisions relating to navigability of the waterbody, if any ———————
(10) Remarks ———————
(11) Finding of navigability (with date) and recommendation for determination ———————

§ 329.15 Inquiries regarding determinations.

(a) Findings and determinations should be made whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the Division Engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the Division Engineer. If a need develops for an emergency determination, District Engineers may act in reliance on a finding prepared as in § 329.14 of this part. The report of findings should then be forwarded to the Division Engineer on an expedited basis.

(b) Where determinations have been made by the Division Engineer, inquiries regarding the navigability of specific portions of waterbodies covered by these determinations may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the projection and preservation of the navigable waters of the United States has determined that —— (River) (Bay) (Lake, etc.) is a navigable water of the United States from —— to ——. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department, whether such actions occur within or outside the navigable areas.

(c) Specific, inquiries regarding the jurisdiction of the Corps of Engineers can be answered only after a determination whether: (1) The waters are navigable waters of the United States or (2) if not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

§ 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determination of navigability are to be maintained in each District office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the Division Engineer; changes are not considered final until a determination has been made by the Division Engineer.

PART 341—[RESERVED]

PART 380—[RESERVED]

PART 384—[RESERVED]

PART 393—[RESERVED]

PART 396—[RESERVED]

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PART 400—[RESERVED]

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Subpart A—Regulations

AUTHORITY: 68 Stat. 92-97 (33 U.S.C. 981-990), as amended; sec. 104, Pub. L. 92-340, 86 Stat. 424 (49 CFR 1.50a) (37 FR 21943), unless otherwise noted.

SOURCE: 39 FR 10900, Mar. 22, 1974, unless otherwise noted.

§ 401.1 Short title.

These regulations may be cited as the "Seaway Regulations."

§ 401.2 Interpretation.

In the regulations in this part:

(a) "Authority" means the St. Lawrence Seaway Authority;

(b) "Corporation" means the Saint Lawrence Seaway Development Corporation;

(c) "Flashpoint" means the temperature as determined by the closed-cup method.

(d) "Navigation season" means the annual period designated by the Corporation and the Authority, that is appropriate to weather and ice conditions or vessel traffic demands, during which the Seaway is open for navigation;

(e) "Officer" means a person employed by the Corporation or the Authority to direct some phase of the operation or use of the Seaway;

(f) "Passing through" means in transit through a lock or through the waters enclosed by the approach walls at either end of a lock chamber;

(g) "Pleasure craft" means a vessel, however propelled, that is used exclusively for pleasure and that does not carry passengers who have paid a fare for passage;

(h) "Preclearance" means the authorization given by the Corporation or the Authority for a vessel to transit;

(i) "Representative" means the owner or charterer of a vessel or an agent of either of them and includes any person who, in an application for preclearance of a vessel, accepts responsibility for payment of the tolls and charges to be assessed against the vessel in respect of transit and wharfage;

(j) "Seaway" means the deep waterway between the Port of Montreal and Lake Erie and includes all locks, canals and connecting and contiguous waters that are part of the deep waterway, and all other canals and works, wherever located, the management, administration and control of which have been entrusted to the Corporation or the Authority;

(k) "Seaway station" means a radio station operated by the Corporation or the Authority;

(l) "Tanker" means any vessel specifically constructed for carrying bulk cargoes of liquid petroleum products, liquid chemicals, liquid edible oils and liquified gases in tanks which form both an integral part and the total cargo carrying portion of that vessel.

(m) "Towed" means pushed or pulled through the water;

(n) "Transit" means to use the Seaway, or a part of it, either upbound or downbound;

(o) "Vessel" means any type of craft used as a means of transportation on water; and

(p) "Vessel traffic controller" means the officer who controls vessel traffic from a Seaway station.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 45 FR 52377, Aug. 7, 1980]

Condition of Vessels

§ 401.3 Maximum vessel dimensions.

(a) No vessel of more than 222.5 meters (730 feet) in overall length or 23.16 meters (76 feet) in extreme breadth shall transit.

(b) No vessel shall transit if any part of the vessel or anything on the vessel extends more than 35.5 meters (116.5 feet) above water level.

(c) No vessel shall transit if any part of its bridges or anything on the vessel protrudes beyond the hull.

(d) No vessel's hull or superstructure when alongside a lock wall shall extend beyond the limits of the lock wall, as illustrated in Appendix I.

(1) A vessel having a beam width less than 23.16 meters (76 feet) and having dimensions exceeding the limits of the block diagram illustrated in Appendix I shall not transit a lock except in accordance with a permit to transit issued by the Authority.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 41 FR 12227, Mar. 24, 1976; 42 FR 27585, May 31, 1977; 43 FR 25817, June 15, 1978; 45 FR 52377, Aug. 7, 1980]

§ 401.4 Minimum length and weight.

No vessel of less than 6.10 meters (20 feet) in overall length or 907.18 kilograms (1 ton) in weight shall transit.

[42 FR 27585, May 31, 1977]

§ 401.5 Required equipment.

(a) No vessel shall transit unless it is (1) Propelled by motor power that is adequate in the opinion of an officer; and (2) Marked and equipped in accordance with the requirements of sections 401.6 to 401.21.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[43 FR 25817, June 15, 1978, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.6 Markings.

(a) Vessels of more than 19.81 meters (65 feet) in overall length shall be correctly and distinctly marked and equipped with draft markings on both sides at the bow and stern.

(b) In addition to the markings required by paragraph (a) of this section, vessels of more than 106.68 meters (350 feet) in overall length shall be marked on both sides with midship draft markings.

(c) Effective April 1, 1981, where a vessel's bulbous bow extends forward beyond her stem head, a symbol of a bulbous bow shall be marked above the 79.25 decimeters (26 feet) mark in addition to a "+" symbol followed by a number indicating the total length in meters by which the bulbous bow projects beyond the stem.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[42 FR 27585, May 31, 1977, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.7 Fenders.

(a) Where any structural part of a vessel protrudes so as to endanger Seaway installations, the vessel shall be equipped with fenders—

(1) Permanently attached to the vessel; or

(2) Where the fenders are not permanently attached—

(i) Made of a material that will float, and

(ii) Securely fastened and suspended from the vessel in a horizontal position by means of a steel cable or a fiber rope in such a way that they may be raised or lowered so as to avoid damage to Seaway installations.

(b) Automobile or other tires shall not be used as fenders.

§ 401.8 Landing booms.

Vessels of more than 45.72 meters (150 feet) in overall length shall be equipped with at least one adequate landing boom on each side.

[42 FR 27585, May 31, 1977]

§ 401.9 Radiotelephone equipment.

(a) Self-propelled vessels, other than pleasure craft of less than 19.81 meters (65 feet) shall be equipped with VHF (very high frequency) radiotelephone equipment.

(b) The radio transmitters on a vessel shall:

(1) Have sufficient power output to enable the vessel to communicate with Seaway stations from a distance of 48.28 kilometers (30 miles); and

(2) Be fitted to operate from the conning position in the wheelhouse and to communicate on 156.55, 156.6, 156.65, 156.7, and 156.8 MHz.

[39 FR 10900, Mar. 22, 1974, as amended at 40 FR 11721, Mar. 13, 1975; 42 FR 27585, May 31, 1977]

§ 401.10 Mooring lines.

(a) Mooring lines shall:

(1) Be of a uniform thickness throughout their length;

(2) Be fitted with a spliced eye not less than 2.44 meters (8 feet) long;

(3) Have sufficient strength to check the vessel; and

(4) Be arranged so that they may be led to either side of the vessel as required.

(b) Unless otherwise permitted by an officer, only wire rope mooring lines shall be used for securing a vessel in lock chambers.

(c) Synthetic lines may be used for mooring at approach walls, tie-up walls and docks within the Seaway if they have a breaking strength that complies with the minimum specifications set out in the table to this section.

TABLE

Ship's overall length	Length of mooring line	Breaking strength
38.10 m to 60.96 m (125 ft to 200 ft)	109.73 m (360 ft)	88.96 kN (10 tons).
61.26 m to 91.44 m (201 ft to 300 ft)	....do	133.45 kN (15 tons).
91.74 m to 121.92 m (301 ft to 400 ft)	....do	177.93 kN (20 tons).
122.22 m to 182.88 m (401 to 600 ft)	....do	249.10 kN (28 tons).
183.18 m to 222.50 m (601 ft to 730 ft)	....do	311.38 kN (35 tons).

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27586, May 31, 1977]

§ 401.11 Fairleads.

Mooring lines, and synthetic hawsers where permitted under paragraph (b) or (c) of § 401.10, shall:

(a) Be led at the vessel's side through a type of fairlead acceptable to the Corporation and the Authority;

(b) Pass through not more than two inboard fairleads that are fixed in place and provided with free-running sheaves or rollers; and

(c) Where the fairleads are mounted flush with the hull, be permanently fendered to prevent the lines from being pinched between the vessel and a wall.

§ 401.12 Minimum requirements—mooring lines and fairleads.

(a) Minimum requirements in respect to mooring lines and winches and the location of fairleads on vessels are as follows:

(1) Vessels of 38.10 meters (125 feet) or less in overall length shall have at least two mooring lines or hawsers that may be led through closed chocks and be hand held, one of which shall lead from the break of the bow and the other shall lead from the quarter;

(2) Vessels of more than 38.10 meters (125 feet) but not more than 60.96 meters (200 feet) in overall length shall have four mooring lines, two of which shall be power operated by winches, capstans or windlasses and

shall be led through a type of fairlead acceptable to the Corporation and the Authority, of which two mooring lines—

(i) One shall lead forward from the break of the bow and one astern from the quarter, or

(ii) One shall lead astern from the break of the bow and one forward from the quarter;

(3) The other two mooring lines required on vessels of more than 38.10 meters (125 feet) but not more than 60.96 meters (200 feet) may be led through closed chocks and may be hand held;

(4) Vessels of more than 60.96 meters (200 feet) in overall length shall have four mooring lines, two of which shall lead from the break of the bow and two of which shall lead from the quarter, and

(i) All shall be power operated by the main drums of adequate power operated winches and not by capstans or windlasses; and

(ii) All shall be led through a type of fairlead acceptable to the Corporation and the Authority.

(b) The following table sets out the requirements for the location of fairleads for vessels of 60.96 meters (200 feet) or more in overall length:

TABLE

Overall length of vessels in meters	For mooring lines No. 1 and 2	For mooring lines No. 3 and 4
60.96 m to 91.44 m (200 ft to 300 ft).	Between 9.14 m and 24.38 m (30 ft and 80 ft) from the stem.	Between 9.14 m and 24.38 m (30 ft and 80 ft) from the stem.
91.44 m to 121.92 m (300 ft to 400 ft).	Between 12.19 m and 30.48 m (40 ft and 100 ft) from the stem.	Between 15.24 m and 33.53 m (50 ft and 110 ft) from the stem.
121.92 m to 152.40 m (400 ft to 500 ft).	Between 12.19 m and 33.53 m (40 ft and 110 ft) from the stem.	Between 15.24 m and 39.62 m (50 ft and 130 ft) from the stem.
152.40 m to 182.88 m (500 ft to 600 ft).	Between 15.24 m and 39.62 m (50 ft and 130 ft) from the stem.	Between 18.29 m and 45.72 m (60 ft and 150 ft) from the stem.
182.88 m to 222.50 m (600 ft to 730 ft).	Between 18.29 m and 48.77 m (60 ft and 160 ft) from the stem.	Between 21.34 m and 51.82 m (70 ft and 170 ft) from the stem.

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27586, May 31, 1977]

§ 401.13 Hand lines.

Hand lines shall:

(a) Be made of manila or other material acceptable to the Corporation and the Authority, and

(b) Have a minimum diameter of 12.70 millimeters (½ inch) and a minimum length of 30.48 meters (100 feet).

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27586, May 31, 1977]

§ 401.14 Anchor marking buoys.

An orange colored anchor marking buoy of a type approved by the Corporation and the Authority, fitted with 22.86 meters (75 feet) of suitable line, shall be secured directly to each anchor so that the buoy will mark the location of the anchor when the anchor is dropped.

[42 FR 27586, May 31, 1977]

§ 401.15 Stern anchors.

Every vessel of more than 106.88 meters (350 feet), the keel of which is laid after January 1, 1975, shall be equipped with a stern anchor.

[42 FR 27586, May 31, 1977]

§ 401.16 Propeller direction alarms.

Every vessel of 1600 gross registered tons or more shall be equipped with—

(a) Propeller direction and shaft r.p.m. indicators located in the wheelhouse and the engine room; and

(b) Visible and audible wrong-way propeller direction alarms located in the wheelhouse and the engine room, unless the vessel is fitted with a device which renders it impossible to operate engines against orders from the bridge telegraph.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[41 FR 12227, Mar. 24, 1976, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.17 Pitch indicators.

Every vessel equipped with a variable pitch propeller shall have a pitch indicator in the wheelhouse and the engine room.

§ 401.18 Steering lights.

Every vessel shall be equipped with a steering light on the bow.

§ 401.19 Disposal and discharge systems.

(a) Every vessel not equipped with containers for ordure shall be equipped with a sewage disposal system enabling compliance with applicable laws relative to sewage disposal.

(b) Garbage on a vessel shall be—

(1) Destroyed by means of an incinerator or other garbage disposal device; or

(2) Retained on board in covered, leakproof containers, until such time as it can lawfully be disposed of.

(c) No substance shall be discharged or disposed of onto a lockwall or tie-up wall by any means, including overboard discharge pipes.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.20 Oily water extractors.

Every vessel that is unable to contain all the waste oil products or bilge water containing waste oil products that may be on board the vessel shall be equipped with a device for the extraction of oil products from waste water before discharge.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[43 FR 25818, June 15, 1978, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.21 Requirements for U.S. waters of the St. Lawrence Seaway.

In addition to the requirements set forth elsewhere in these Regulations, vessels transiting the U.S. waters of the St. Lawrence Seaway are subject to the requirements set out in Schedule I.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52378, Aug. 7, 1980]

Preclearance and Security for Tolls

§ 401.22 Preclearance of vessels.

(a) No vessel, other than a pleasure craft of 317.52 metric tons (350 tons) or less in weight, shall transit until an application for preclearance has been made, pursuant to § 401.24, to the Corporation or the Authority by the vessel's representative and the application has been approved by the Corporation or the Authority pursuant to § 401.25.

(b) No vessel shall transit while its preclearance is suspended or has terminated by reason of—

(1) The expiration of the representative's guarantee of toll payment,

(2) A change of ownership or representative of the vessel, or

(3) A material alteration in the physical characteristics of the vessel, until another application for preclearance has been made and approved.

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27586, May 31, 1977]

§ 401.23 Liability insurance.

(a) It is a condition of approval of an application for preclearance that the vessel is covered by liability insurance equal to or exceeding $100 per gross registered ton.

(b) No vessel shall transit while its liability insurance is not in full force and effect.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.24 Application for preclearance.

The representative of a vessel may, on a form obtained from the Corporation, Massena, New York, or the Authority, Cornwall, Ontario, apply for preclearance, giving particulars of the ownership, liability insurance and physical characteristics of the vessel

and guaranteeing payment of the tolls and charges that may be incurred by the vessel.

[42 FR 27586, May 31, 1977]

§ 401.25 Approval of preclearance.

Where the Corporation or the Authority approves an application for preclearance, it shall—

(a) Give the approval in writing; and

(b) Assign a number to the approval.

§ 401.26 Security for tolls.

(a) Before transit by a vessel to which the requirement of preclearance applies, security for the payment of tolls in accordance with the St. Lawrence Seaway Tariff of Tolls as well as security for any other charges, shall be provided by the representative by means of—

(1) A deposit of money with the Corporation or the Authority;

(2) A deposit of money to the credit of the Corporation or the Authority with a bank in the United States or a chartered bank in Canada;

(3) A deposit with the Corporation or the Authority of negotiable bonds of the Government of the United States or the Government of Canada; or

(4) Furnishing to the Corporation or the Authority a letter of guarantee given by a bank referred to in paragraph (a)(2) of this section.

(b) The security for the tolls of a vessel shall be sufficient to cover the gross registered tonnage of the vessel:

(1) On the Seaway between Montreal and Lake Ontario, at $1.50 per ton for transit each way or at $3.00 per ton for a round trip;

(2) On the Welland Canal, at $1.25 per ton for transit each way or at $2.00 per ton for a round trip; and shall be maintained in an amount sufficient to cover each transit for which tolls have been incurred and are unpaid.

(c) Where a number of vessels:

(1) Are owned or controlled by the same individual or company, and

(2) Have the same representative, the security for the tolls may be provided in an amount estimated by the representative to be equal to $2.20 per ton for the aggregate maximum tonnage of the vessels within the Seaway at any one time and shall be maintained in an amount sufficient to cover each transit for which tolls have been incurred and are unpaid.

(d) Where, in the opinion of the Corporation or the Authority, the security provided by the representative is insufficient to secure the tolls and charges incurred or likely to be incurred by a vessel, the Corporation or the Authority may suspend the preclearance of the vessel.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 45 FR 52378, Aug. 7, 1980]

Seaway Navigation

§ 401.27 Compliance with instructions.

Every vessel shall comply promptly with transit instructions given by the vessel traffic controller or any other officer.

§ 401.28 Speed limits.

(a) The maximum speed over the bottom for a vessel of more than 12.19 meters (40 feet) in overall length shall be regulated so as not to adversely affect other vessels or shore property, and in no event shall such a vessel proceeding in an area between the place set out in Column I of an item of Schedule II and the place set out in Column II of that item exceed the speed set out in Column III or Column IV of that item, whichever is designated by the Corporation and the Authority from time to time as being appropriate to existing water levels.

(b) Every vessel under way shall proceed at a reasonable speed so as not to cause undue delay to other vessels.

(c) Every vessel passing a moored vessel or equipment working in a canal shall proceed at a speed that will not endanger the moored vessel, the moored equipment or the occupants of either.

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27586, May 31, 1977]

§ 401.29 Maximum draft.

(a) The loading, draft and speed of a vessel in transit shall be controlled by the master, who shall take into ac-

count the vessel's individual characteristics and its tendency to list or squat, so as to avoid striking bottom.[1]

(b) The draft of a vessel shall not, in any case, exceed 79.25 decimeters (26 feet) or the maximum permissible draft designated by the Corporation or the Authority for the part of the Seaway in which a vessel is passing.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[42 FR 27587, May 31, 1977, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.30 Adequate ballast and proper trim.

(a) Every vessel shall be adequately ballasted.

(b) Every vessel shall be properly trimmed.

(c) Any vessel that is not adequately ballasted or properly trimmed in the opinion of an officer, may be refused transit or may be delayed.

§ 401.31 Meeting and passing.

(a) The meeting and passing of vessels shall be governed by the Rules of the Road for the Great Lakes.

(b) No vessel shall meet another vessel within the limit of approach signs or caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Authority or the Corporation in that area.

(c) Except as instructed by the vessel traffic controller, no vessel shall overtake and pass or attempt to overtake and pass another vessel—

(1) In any canal;

(2) Within 609.60 meters (2,000 feet) of a canal or lock entrance;

(3) After the order of passing through has been established by the vessel traffic controller.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 43 FR 25818, June 15, 1978; 45 FR 52378, Aug. 7, 1980]

[1]The main channels between the Port of Montreal and Lake Erie have a controlling depth of 8.23 meters (27 feet).

§ 401.32 Cargo booms—deck cargo.

(a) Every vessel shall have cargo booms secured in a manner that affords maximum visibility from the wheelhouse.

(b) Cargo or containers carried, forward or aft, on deck shall be stowed in a manner that—

(1) Affords an unrestricted view from the wheelhouse for the purpose of navigation; and

(2) Does not interfere with mooring equipment.

[39 FR 10900, Mar. 22, 1974, as amended at 41 FR 12227, Mar. 24, 1976]

§ 401.33 Special instructions.

Special instructions shall be applied for from the Corporation or the authority in connection with the intended transit of vessels of unusual design, hulks, sections of vessels, large dredges, all vessels in tow and vessels whose limits exceed the requirements of § 401.3(d), and such vessels shall not transit except in compliance with such instructions.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52378, Aug. 7, 1980]

§ 401.34 Vessels in tow.

No vessel that is not self-propelled shall be underway in any canal unless it is securely tied to an adequate tug or tugs, in accordance with special instructions given by the Corporation or the Authority pursuant to § 401.33.

§ 401.35 Employment of tugs.

No tug shall be fastened alongside a vessel in a canal so that the aggregate of the beams exceeds 23 meters (75 feet 6 inches).

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52378, Aug. 7, 1980]

§ 401.36 Order of passing through.

Vessels shall advance to a lock in the order instructed by the vessel traffic controller.

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§ 401.37 Mooring at tie-up walls.

(a) Upon arrival at a lock, a vessel awaiting instructions to advance shall moor at the tie-up wall, close up to the designated limit of approach sign or to the vessel preceding it, whichever is specified by an officer.

(b) Crew members being put ashore on landing booms and handling mooring lines on the tie-up walls of Eisenhower and Snell Locks shall wear life jackets.

[39 FR 10900, Mar. 22, 1974, as amended at 41 FR 22563, June 4, 1976]

§ 401.38 Limit of approach to a lock.

A vessel approaching a lock or guard gate shall comply with directions indicated by the signal light system associated with the lock or guard gate, and in no case shall its stem pass the designated limit of approach sign while a red light or no light is displayed.

§ 401.39 Preparing mooring lines for passing through.

Before a vessel enters a lock—

(a) Sufficient lengths of mooring lines to reach the mooring posts on the lock walls shall be drawn off the winch drums and laid out on the deck; and

(b) The eye of each mooring line shall be passed outward through the fairleads at the side.

§ 401.40 Entering a lock.

(a) No vessel shall proceed into a lock in such a manner that the stem passes the stop symbol on the lock wall nearest the closed gates.

(b) Every vessel in a lock shall be positioned and moored as directed by the officer in charge of the mooring operation.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[43 FR 25818, June 15, 1978, as amended at 45 FR 52378, Aug. 7, 1980]

§ 401.41 Tandem lockage.

Where two or more vessels are being locked together, vessels astern of the leading vessel shall—

(a) Come to a full stop a sufficient distance from the preceding vessel to avoid a collision; and

(b) Be moved into mooring position as directed by the officer in charge of the lock.

§ 401.42 Passing hand lines.

(a) At locks, hand lines shall be secured to the mooring lines and passed as follows:

(1) A downbound vessel shall use its own hand lines, secured to the eye at the end of the mooring lines, which hand lines shall be passed to the linesmen at the lock as soon as the vessel passes the open gates;

(2) Hand lines shall be passed to upbound vessels by the linesmen as soon as the vessel passes the open gates, and secured, by means of a clove hitch, to the mooring lines 61 centimeters (2 feet) behind the splice of the eye; and

(3) At Iroquois Lock and Lock 8, Welland Canal, both upbound and downbound vessels shall use their own hand lines as provided in paragraph (a)(1) of this section.

(b) Knotted or weighted hand lines shall not be used in the chamber of a lock.

(c) Mooring lines shall not be passed over the side of a vessel in a manner dangerous to a lock crew.

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27587, May 31, 1977]

§ 401.43 Mooring table.

Unless otherwise directed by an officer, vessels passing through locks in the South Shore, Beauharnois, Wiley-Dondero, Iroquois and Welland Canals shall moor at the side of the tie-up wall or lock as shown in the table to this section.

	South Shore		Beauharnois			Wiley-Dondero Iroquois		
	St. Lambert	Cote St. Catharine	Lower	Pool	Upper	Snell	Eisenhower	Iroquois
Locks:								
Upbound	Port	Port	Starboard		Starboard	Starboard	Starboard	Port.
Downbound	Starboard	Starboard	Port		Port	Port	Port	Starboard.
Tieup walls:								
Upbound	...do	...do	...do	Port		Starboard	Starboard	...Do.
Downbound	Port	Port		Starboard	Starboard	Port	Port	Port.

Welland Canal

	1	2	3	4	5	6	7	Guard gate	8
Locks:									
Upbound	Starboard	Port	Port	Port	Port	Port	Port		Starboard.
Downbound	Port	Starboard	Starboard	...do	...do	...do	Starboard		Port.
Tieup walls:									
Upbound	Starboard	...do	...do	Starboard			...do	Starboard	Port or starboard.
Downbound	Port	Port	Port			Starboard	...do	Port	Do.

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95–474, 92 Stat. 1471)

[39 FR 10900, May 22, 1974, as amended at 40 FR 11721, Mar. 13, 1975; 45 FR 52378, Aug. 7, 1980]

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§ 401.44 Mooring in locks.

(a) Mooring lines shall only be placed on mooring posts as directed by the officer in charge of a mooring operation.

(b) No winch from which a mooring line runs shall be operated until the officer in charge of a mooring operation has signalled that the line has been placed on a mooring post.

§ 401.45 Emergency procedure.

When the speed of a vessel entering a lock chamber has to be checked immediately, the master or the officer in charge of the mooring operation shall order all mooring lines to be put out as soon as possible, and the master shall signal a full check by sounding a series of five or more short blasts of the vessel's whistle.

§ 401.46 Attending lines.

(a) Lines of a vessel shall be under visual control and attended by members of its crew during the time the vessel is passing through a lock.

(b) While a vessel is within a lock chamber and lines are hand held for tension control, each line shall be attended by at least one member of the vessel's crew.

§ 401.47 Leaving a lock.

(a) Mooring lines shall only be cast off as directed by the officer in charge of a mooring operation.

(b) No vessel shall proceed out of a lock until the exit gates, ship arresters and the bridge, if any, are in a fully open position.

§ 401.48 Turning basins.

No vessel shall be turned about in any canal, except—

(a) With permission from the vessel traffic controller; and

(b) At the locations set out in the table to this section.

TABLE

1. South Shore Canal:

(a) Turning Basin No. 1—Opposite Brossard.

(b) Turning Basin No. 2—Immediately below Cote St. Catherine Lock.

2. Welland Canal:

(a) Turning Basin No. 1—Opposite St. Catharines Wharf for vessels up to 106.68 meters (350 feet).

(b) Turning Basin No. 2—Between Lock 7 and Guard Gate for vessels up to 182.88 meters (600 feet).

(c) Turning Basin No. 3—Immediately south of Bridge 12.

(d) Turning Basin No. 4—North of Lock No. 8 for vessels up to 167.64 meters (550 feet).

(e) For vessels up to 79.25 meters (260 feet):

(1) North end of Wharf No. 1,

(2) Tie-up wall above Lock 1,

(3) Tie-up wall below Lock 2,

(4) Wharf No. 9,

(5) Between the southerly extremities of Wharves 18-2 and 18-3.

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27587, May 31, 1977]

§ 401.49 Dropping anchor or tying to canal bank.

Except in an emergency, no vessel shall drop anchor in any canal or tie-up to any canal bank unless authorized to do so by the vessel traffic controller.

§ 401.50 Anchorage areas.

Except in an emergency, or unless authorized to do so by the vessel traffic controller, no vessel shall drop anchor in any part of the Seaway except in the following designated anchorage areas:

(a) Point Fortier (Lake St. Louis).

(b) Melocheville (Beauharnois Canal).

(c) St. Zotique, Dickerson Island and Stonehouse Point (Lake St. Francis).

(d) Wilson Hill Island and Morrisburg (Lake St. Lawrence).

(e) Prescott and Union Park (St. Lawrence River).

(f) Off Port Weller (Lake Ontario).

(g) Off Port Colborne (Lake Erie).

[39 FR 10900, Mar. 22, 1974, as amended at 40 FR 25813, June 19, 1975]

§ 401.51 Signalling approach to a bridge.

Unless a vessel's approach has been recognized by a flashing signal, the master shall signal the vessel's presence to the bridgemaster by VHF radio when it comes abreast of any of the bridge whistle signs, which signs shall be placed at distances varying between 670.56 meters and 1500 meters (2200 feet and 4921 feet) upstream and downstream from movable bridges at sites other than lock sites.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52379, Aug. 7, 1980]

§ 401.52 Limit of approach to a bridge.

(a) No vessel shall pass the limit of approach sign at any movable bridge until the bridge is in a fully open position and the signal light shows green.

(b) No vessel shall pass the limit of approach sign at the twin Railway Bridges on the South Shore Canal at Caughnawaga or at Bridges 20 and 21 on the Welland Canal, until both bridges are in a fully open position and both signal lights show green.

§ 401.53 Obstructing navigation.

No vessel shall be operated, drop anchor or be fastened or moored in a manner that obstructs or hinders navigation.

§ 401.54 Interference with navigation aids.

(a) Aids to navigation shall not be interfered with or moored to.

(b) No person shall, unless authorized by the Corporation or the Authority, set out buoys or navigation markers on the Seaway.

§ 401.55 Searchlights.

No searchlight shall be used in such a manner that its rays interfere with the operators at a Seaway structure or on any vessel.

§ 401.56 Damaging or defacing Seaway property.

The master of every vessel shall—

(a) Navigate so as to avoid damage to Seaway property; and

(b) Prevent defacement of Seaway property by any member of the vessel's crew.

§ 401.57 Disembarking or boarding.

(a) Except as authorized by an officer, no person, other than a member of the crew of a vessel passing through, shall disembark or board any vessel while the vessel is passing through.

(b) No member of the crew of a vessel passing through shall disembark or board except for the purpose of carrying out essential duties as directed by the Master.

§ 401.58 Pleasure craft scheduling.

The transit of pleasure craft shall be scheduled by the vessel traffic controller or the officer in charge of a lock and may be delayed so as to avoid interference with other vessels.

§ 401.59 Pollution.

(a) No vessel shall—

(1) Emit sparks or excessive smoke; or

(2) Blow boiler tubes.

(b) No vessel shall discharge into Seaway waters any substance not in conformity with applicable United States Federal Regulations and Canadian Regulations with the exception of the waters of the Welland Canal where two specific zones are established in which no substances shall be discharged, namely,

(1) From Lock 7 (Thorold) to mile 17 (Welland); and

(2) From Lock 8 (Port Colborne) to the outer Port Colborne Piers (Lake Erie).

(c) A record shall be kept of each location within the Seaway or adjacent waters where bilge water has been discharged.

(d) Except as authorized by the Corporation or the Authority, no vessel shall discharge garbage, ashes, ordure, litter or other materials.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 45 FR 52379, Aug. 7, 1980]

RADIO COMMUNICATIONS

§ 401.60 Listening watch and notice of arrival.

(a) Vessels shall be on radio listening watch on the applicable assigned frequency while within a Seaway traffic control sector as shown on the General Seaway Plan and shall give notice of arrival in the manner prescribed in § 401.64 upon reaching any designated calling in point.

(b) Notice of arrival shall be deemed to have been given when it is acknowledged by a Seaway station.

§ 401.61 Assigned frequencies.

The Seaway stations operate on the following assigned VHF frequencies:

156.8 MHz (channel 16)—Distress and Calling.

156.7 MHz (channel 14)—Working (Canadian Stations other than Lakes Ontario and Erie).

156.45 MHz (channel 9)—Working (Canadian Stations other than Lakes Ontario and Erie).

156.65 MHz (channel 13)—Working (U.S. Stations, Lake Ontario and Sector 4 of the River).

156.6 MHz (channel 12)—Working (U.S. Stations other than Lake Ontario and Sector 4 of the River).

156.55 MHz (channel 11)—Working (Canadian Stations, Sector 3, Lake Ontario and Lake Erie.)

[39 FR 10900, Mar. 22, 1974, as amended at 40 FR 11721, Mar. 13, 1975]

§ 401.62 Seaway stations.

The Seaway stations are located as follows:

VDX20 (Seaway Beauharnois)—Upper Beauharnois Lock—Traffic Control Sector No. 1.

KEF (Seaway Eisenhower)—Eisenhower Lock—Traffic Control Sector No. 2.

VDX21 (Seaway Iroquois)—Iroquois Lock—Traffic Control Sector No. 3.

WAG (Seaway Clayton)—Clayton, N.Y.—Traffic Control Sector No. 4.

WAG (Seaway Sodus)—Sodus, N.Y.—Traffic Control Sector No. 4.

VDX72 (Seaway Newcastle)—Port Hope, Ontario-Traffic Control Sector No. 5.

VDX70 (Seaway Newcastle)—Port Weller, Ontario-Traffic Control Sector No. 5.

VDX22 (Seaway Welland)—St. Catharines, Ontario—Traffic Control Sector No. 6.

VDX68 (Seaway Long Point)—Port Colborne, Ontario—Traffic Control Sector No. 7.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 40 FR 25813, June 19, 1975; 45 FR 52379, Aug. 7, 1980]

§ 401.63 Radio procedure.

Every vessel shall use the channels of communication in each control sector as listed in the table to this section.

Control sector No. and station	Sector limits	Call in	Work	Listening watch
1 Seaway Beauharnois	C.I.P. No. 2 to C.I.P. No. 6-7	Channel 14	Channel 14	Channel 14.
2 Seaway Eisenhower	C.I.P. No. 6-7 to C.I.P. No. 10-11	Channel 12	Channel 12	Channel 12.
3 Seaway Iroquois	C.I.P. No. 10-11 to Cross Over Island	Channel 11	Channel 11	Channel 11.
4 Seaway Clayton	Cross Over Island to Cape Vincent	Channel 13	Channel 13	Channel 13.
4 Seaway Sodus	Cape Vincent to Mid-Lake Ontario	do	do	Do.
5 Seaway Newcastle	Mid-Lake Ontario to C.I.P. No. 15	Channel 11	Channel 11	Do.
6 Seaway Welland	C.I.P. No. 15 to C.I.P. No. 16	Channel 14	Channel 14	Channel 14.
7 Seaway Long Point	C.I.P. No. 16 to Long Point	Channel 11	Channel 11	Channel 16.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 40 FR 11721, Mar. 13, 1975; 40 FR 25814, June 16, 1975; 43 FR 25818, June 15, 1978; 45 FR 52379, Aug. 7, 1980]

§ 401.64 Calling in.

(a) Every vessel, intending to transit or in transit, shall report on the assigned frequency to the designated Seaway station when opposite any calling in point or checkpoint (indicated on the General Seaway Plan) and, when reporting, shall give the information indicated in Schedule III.

(b) Changes in information provided under paragraph (a), including updated ETAs that vary from the ETAs provided under that paragraph by 30 minutes or more, shall be reported to the appropriate Seaway station.

(c) A downbound vessel in St. Lambert Lock shall, before communicating with Montreal Marine Control, switch to channel 10 (156.5 MHz) for a Montreal Harbor situation report.

(d) After obtaining the situation report referred to in paragraph (c) of this section, the downbound vessel shall return to guarding channel 14 (156.7 MHz) and remain on that channel until it is clear of St. Lambert Lock chamber.

(e) When the downbound vessel has cleared the downstream end of the lower approach wall of St. Lambert Lock, the master or pilot of the vessel shall call "Seaway Beauharnois" and request permission to switch to channel 10 (156.5 MHz).

(f) Seaway Beauharnois shall grant the permission requested pursuant to paragraph (e) of this section and advise the downbound vessel of any upbound traffic that may be cleared for Seaway entry but not yet at C.I.P. 2.

(g) In the event of an expected meeting of vessels between the downstream end of the lower approach wall and C.I.P. 2, the downbound vessel shall be told to remain on channel 14 (156.7 MHz) until the meeting has been completed.

(h) After the meeting, the downbound vessel shall call "Seaway Beauharnois" before switching to channel 10 (156.5 MHz).

[39 FR 10900, Mar. 22, 1974, as amended at 43 FR 25818, June 15, 1978]

§ 401.65 Communication—ports, docks and anchorages.

(a) Every vessel entering or leaving a lake port shall report to the appropriate Seaway station at the following check points:

(1) Toronto and Hamilton—0.87 of a nautical mile (1 mile) outside of harbor limits; and

(2) Other lake ports—when crossing the harbor entrance.

(b) Every vessel arriving at a port, dock or anchorage shall report to the appropriate Seaway station, giving an estimated time of departure if possible, and, at least four hours prior to departure, every vessel departing from a port, dock or anchorage shall report in the same way giving its destination and the expected time of arrival at the next check point.

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27587, May 31, 1977]

Dangerous Cargo

Authority: Sections 401.66 through 401.73 issued under 68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471.

Source: Sections 401.66 through 401.73 appear at 45 FR 52379, Aug. 7, 1980, unless otherwise noted.

§ 401.66. Applicable laws.

Vessels carrying a cargo or part cargo of fuel oil, gasoline, crude oil or other flammable goods in bulk, including empty tankers which are not gas free, and vessels carrying dangerous substances whether break-bulk or containerized, to which regulations made under the *Canada Shipping Act*, or under the *Transportation of Dangerous Goods Act* or to which the *Dangerous Cargo Act* or the *Hazardous Materials Transportation Act* of the United States or regulations issued pursuant thereto apply, shall be deemed to carry dangerous substances and shall not transit unless all requirements of the said Statutes and regulations and of these Regulations have been fulfilled.

§ 401.67 Explosive vessels.

A vessel carrying explosives, either Government or commercial, as defined in the Dangerous Cargo Act of the United States and in the International Maritime Dangerous Goods Code, Class 1, Divisions 1.1 to 1.5 inclusive, shall be deemed for the purpose of these Regulations to be an explosive vessel.

§ 401.68 Explosives permit.

(a) A Seaway Explosives Permit is required for an explosive vessel in the following cases:

(1) For all vessels carrying any quantity of explosives with a mass explosive risk, up to a maximum of 2 tonnes (2.2 tons) (IMCO Class 1, Division 1.1);

(2) For all vessels carrying more than 10 tonnes (11.02 tons) and up to a maximum of 50 tonnes (55.12 tons) of explosives that do not explode en masse (IMCO Class 1, Division 1.2);

(3) For all vessels carrying more than 100 tonnes (110.23 tons) and up to a maximum of 500 tonnes (551.16 tons) of explosives having a fire hazard without explosive effect (IMCO Class 1, Division 1.3); and

(4) For all vessels carrying more than 100 tonnes (110.23 tons) and up to a maximum of 500 tonnes (551.16 tons) of safety explosives and shop goods (IMCO Class 1, Divisions 1.4 and 1.5).

(b) When an explosive vessel is carrying quantities of explosives above the maximum mentioned in paragraph (a), no Seaway Explosives Permit shall be granted and the vessel shall not transit.

(c) A written application for a Seaway Explosives Permit may be made to the Chief, Office of Lock Operations, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 or to the Manager of Operational Services, The St. Lawrence Seaway Authority, 202 Pitt Street, Cornwall, Ontario K6J 3P7. The application shall show that the cargo is packed, marked, labeled, described, certified, stowed and otherwise conforms with all relevant regulations of the country in which it was loaded and of Canada and the United States.

(d) A signed copy of a Seaway Explosives Permit and a true copy of any certificate as to the loading of dangerous cargo shall be kept on board every explosive vessel in transit and shall be made available to any officer requiring production of such copies.

§ 401.69 Hazardous cargo vessels.

For the purpose of these Regulations, a vessel shall be deemed to be a hazardous cargo vessel in the following cases:

(a) A tanker carrying fuel oil, gasoline, crude oil or other flammable liquids in bulk, having a flashpoint below 61°C, including a tanker that is not gas free where its previous cargo had a flashpoint below 61°C;

(b) A tanker carrying compressed liquefied gases, bulk acids or liquefied chamicals;

(c) A dry cargo vessel carrying the following dangerous substances, whether in bulk, break-bulk or containerized, that are

(1) In excess of 50 tonnes (55.12 tons) of gases, compressed, liquefied or dissolved under pressure (IMCO Class 2),

(2) In excess of 50 tonnes (55.12 tons) of flammable liquids having a flashpoint below 61°C (IMCO Class 3),

(3) In excess of 50 tonnes (55.12 tons) of flammable solids spontaneously combustible material or substances emitting combustible gases when wet (IMCO Class 4),

(4) In excess of 50 tonnes (55.12 tons) of oxidizing substances or organic peroxides (IMCO Class 5),

(5) Any quantity of poisonous (toxic) substances and infectious substances (IMCO Class 6),

(6) Any quantity of radioactive substances (IMCO Class 7),

(7) In excess of 50 tonnes (55.12 tons) of corrosive substances (IMCO Class 8),

(8) Any quantity of metal turnings, borings, cuttings, or shavings in bulk having a temperature on loading or in transit in excess of 65.5°C, and

(9) Any quantity of grain that is under fumigation, where the chemical being used is hazardous to human life.

§ 401.70 Fendering—explosive and hazardous cargo vessels.

All explosive vessels requiring a permit in accordance with § 401.68 and all tankers carrying cargo with a flashpoint of up to 61°C, except those carrying such cargo in center tanks with gas free wing tanks, shall be equipped with a sufficient number of non-metallic fenders on each side to prevent any metallic part of the vessel from touching the side of a dock or lock wall.

§ 401.71 Signals—explosive and hazardous cargo vessels.

(a) An explosive vessel shall display at the masthead or at an equivalent conspicuous position a "B" flag.

(b) A hazardous cargo vessel shall display at the masthead or at an equivalent conspicuous position a "B" flag superior to numeral pennant number 1.

[45 FR 52380, Aug. 7, 1980, as amended at 45 FR 56342, Aug. 25, 1980]

§ 401.72 Reporting—explosive and hazardous cargo vessels.

(a) Every explosive vessel or hazardous cargo vessel shall, when reporting information related to cargo as required by § 401.64(a), report the nature and tonnage of its explosive or hazardous cargo and the flashpoint of that cargo where applicable. Every vessel carrying grain which is under fumigation shall declare the nature of the fumigant and its properties.

(b) Every explosive vessel requiring a Seaway Explosives Permit shall, when reporting in, give the number of its Seaway Explosives Permit.

(c) Every hazardous cargo vessel carrying metal turnings, shavings, cuttings or borings in bulk shall, when reporting information related to cargo as required by § 401.64(a), give the high temperature reading of each compartment at that time, together with the high temperature reading in each compartment taken on completion of loading.

(d) Every vessel carrying radioactive substances shall, when reporting in, give the number and date of issue of any required certificate issued by the Atomic Energy Control Board authorizing such shipment.

§ 401.73 Cleaning tanks—hazardous cargo vessels.

Gas freeing and cleaning of cargo tanks shall not take place:

(a) In a canal or a lock;

(b) In an area that is not clear of other vessels or structures; and

(c) Before gas freeing and tank cleaning has been reported to the nearest Seaway station.

TOLL ASSESSMENT AND PAYMENT

§ 401.74 Transit Declaration.

(a) The Seaway Transit Declaration Form (Cargo and Passenger), which may be obtained from the Corporation, Massena, New York, or from the Authority, Cornwall, Ontario forwarded to the Corporation or the Authority by the representative of every vessel, other than a pleasure craft of not more than 317.52 metric tons (350 tons), within fourteen days after the vessel first enters the Seaway on any upbound or downbound voyage.

(b) The loaded or manifest weight of cargo shall be shown on the Seaway Transit Declaration Form, except in the case of petroleum products where gallonage meters are not available at the point of loading, in which case offloaded weights may be shown on the Declaration Form.

(c) Where a vessel carries cargo to or from an overseas port, a copy of the cargo manifest, duly certified, shall be forwarded with the Seaway Transit Declaration Form.

(d) A Weight-Scale Certificate or similar document issued in the place of a cargo manifest may be accepted in lieu thereof.

(e) Where a Seaway Transit Declaration Form is found to be inaccurate, concerning the destination, cargo or passengers, the representative shall immediately forward to the Corporation or the Authority a new, revised Declaration Form.

(f) The information set out in the Seaway Transit Declaration Form shall be transmitted by the Authority to Statistics Canada, and the Corporation will transmit the statistical data required in the United States.

(g) Seaway Transit Declaration Forms shall be used in assessing toll charges in accordance with the St. Lawrence Seaway Tariff of Tolls, and toll accounts shall be forwarded in duplicate to the representative or his designated agent.

[39 FR 10900, Mar. 22, 1974, as amended at 42 FR 27587, May 31, 1977]

§ 401.75 Payment of tolls.

Every toll account is payable in Canadian or American funds as indicated

on the account, within fourteen days after it is issued, and any adjustment of the amount payable shall be provided for in a subsequent account.

[41 FR 12227, Mar. 24, 1976]

§ 401.76 In-transit cargo.

Cargo that is carried both upbound and downbound in the course of the same voyage shall be reported in the Seaway Transit Declaration Form, but is deemed to be ballast and not subject to toll assessment.

§ 401.77 [Reserved]

INFORMATION AND REPORTS

§ 401.78 Required information.

(a) Documentary evidence, comprising inspection certificates, load line certificates, crew lists, dangerous cargo manifest and the cargo stowage plan, shall be carried on board and shall be made available to any officer requiring production of such evidence.

(b) Documentary evidence, comprising evidence of cargo declared, cargo manifest, dangerous cargo manifest and bills of lading, shall be kept by the agent, owner or operator for a period of five years, or until an audit has been performed by the Corporation or the Authority, whichever occurs first, and such documents shall be made available to an officer requiring production of such evidence.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52380, Aug. 7, 1980]

§ 401.79 Advance notice of arrival, vessels requiring inspection.

Every vessel shall provide at least twenty-four hours notice of arrival to the nearest Seaway station prior to an initial transit or in case reinspection of the vessel is required.

§ 401.80 Reporting dangerous cargo.

(a) The master of any explosive vessel or hazardous cargo vessel shall report or shall cause to be reported to the nearest Seaway station at least three hours prior to expected entry into the Seaway System, the nature and quantity of the dangerous cargo and where it is stowed on the vessel.

(b) The master of any vessel that takes on explosive or hazardous cargo while in the Seaway System shall report to the nearest Seaway station at least three hours prior to commencing transit the nature and quantity of the dangerous cargo and where it is stowed on the vessel.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52380, Aug. 7, 1980, as amended at 45 FR 56342, Aug. 25, 1980]

§ 401.81 Reporting an accident.

(a) Where a vessel on the Seaway is involved in an accident, the master of the vessel shall report the accident to the nearest Seaway station immediately, if the vessel can make radio contact with the station, or as soon as the vessel can make radio contact with the station in any other case.

(b) Where a vessel approaching the Seaway with intent to transit has been involved in an accident in the course of its last voyage that might affect its ability to transit safely and expeditiously, the master of the vessel shall report the accident to the nearest Seaway station before entering the Seaway.

[39 FR 10900, Mar. 22, 1974, as amended at 40 FR 11721, Mar. 13, 1975]

§ 401.82 Reporting mast height.

A vessel, any part of which extends more than 33.53 meters (110 feet) above water level, shall not transit any part of the Seaway until precise information concerning the height of the vessel has been furnished to the Seaway station.

[42 FR 27587 May 31, 1977; 42 FR 29308, June 8, 1977]

§ 401.83 Reporting position at anchor, wharf, etc.

A vessel anchoring in a designated anchorage area, or elsewhere, and a vessel mooring at a wharf or dock, tying up to a canal bank or being held on a canal bank in any manner shall immediately report its position to the vessel traffic controller and it shall

not resume its voyage without the vessel traffic controller's permission.

§ 401.84 Reporting of impairment or other hazard by vessels transiting within the Seaway.

While transiting the Seaway, the master of a vessel shall immediately report to the nearest Seaway station:

(a) Any condition of the vessel that might impair its ability to transit safely and expeditiously;

(b) Any hazardous condition of the vessel;

(c) Any malfunction on the vessel of equipment required by §§ 401.5 and 401.21;

(d) Any difficulty on the part of the vessel in controlling its tow or tows;

(e) Any hazard, dangerous situation or malfunctioning aid to navigation which has not been published in a Notice to Mariners;

(f) Any loss of anchor with particulars of the precise location of the loss; and

(g) Any location where visibility is less than one nautical mile (1.15 statute miles).

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52380, Aug. 7, 1980]

§ 401.85 Reporting of impairment or other hazard by vessels intending to transit the Seaway.

The master of any vessel which intends to transit the Seaway shall report to the nearest Seaway Station, prior to entering the Seaway, any of the conditions set out in paragraphs (a) to (d) of § 401.84.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52380, Aug. 7, 1980]

Detention and Sale

§ 401.86 Security for damages or injury.

An officer may detain a vessel that causes—

(a) Damage to property of the Corporation or the Authority;

(b) Damage to goods or cargo stored on property of the Corporation or the Authority; or

(c) Injury to employees of the Corporation or the Authority; until security satisfactory to the Corporation or the Authority has been provided.

§ 401.87 Detention for toll arrears or violations.

(a) An officer may detain a vessel where—

(1) The tolls or charges levied against the vessel have not been paid; or

(2) A violation of these Regulations has taken place in respect of the vessel.

(b) A vessel detained pursuant to paragraph (a)(1) of this section shall be released when the unpaid tolls or charges are paid.

(c) A vessel detained pursuant to paragraph (a)(2) of this section may be released when a sum of money in an amount, determined by the Corporation or the Authority to be the maximum fine or civil penalty that may be imposed for the violation in respect of which the vessel has been detained, is deposited with the Corporation or the Authority as security for the payment of any fine or civil penalty that may be imposed.

(d) Where a sum of money has been deposited pursuant to paragraph (c) of this section, the Corporation or the Authority may—

(1) Return the deposit;

(2) Hold the deposit in trust as security for the payment of any fine that may be imposed; or

(3) Retain the deposit if the depositor agrees to retention by the Corporation or the Authority of the sum deposited.

(e) Although the depositor may have agreed to retention by the Authority of an amount deposited under paragraph (c) of this section, he may bring an action for the recovery of the amount deposited on the ground that there has been no violation of the regulations in this part.

§ 401.88 Power of sale for toll arrears.

(a) Where a vessel has been detained pursuant to § 401.87(a) and payment of the tolls and charges or the fine imposed has not been made within a reasonable time after

(1) The time of the detention, in the case of arrears of tolls and charges, or

(2) The imposition of the fine or penalty, in the case of a violation, the Corporation or the Authority may direct that the vessel or its cargo or any part thereof be seized and sold subject to and in accordance with an order of a court of competent jurisdiction.

(b) The Corporation or the Authority may, after giving such notice as it deems reasonable to the representative of the vessel, sell the vessel or cargo seized pursuant to paragraph (a) of this section.

(c) An amount equal to the cost of the detention, seizure and sale, and

(1) The tolls and charges payable, or

(2) The fine or penalty imposed on conviction,

shall be deducted from the proceeds of a sale pursuant to paragraph (b) of this section, and the balance shall be paid to the owner of the vessel or cargo or the mortgagee thereof, as the case may be.

[39 FR 10900, Mar. 22, 1974, as amended at 41 FR 12227, Mar. 24, 1976]

General

§ 401.89 Transit refused.

(a) An officer may refuse to allow a vessel to transit when, in his opinion,

(1) The vessel is not equipped in accordance with §§ 401.6 to 401.21;

(2) The vessel, its cargo, equipment or machinery are in a condition that will prevent safe or expeditious transit by that vessel; or

(3) The vessel is manned with a crew that is incompetent or inadequate.

§ 401.90 Boarding for inspection.

For the purpose of enforcing the regulations in this part, an officer may board any vessel and:

(a) Examine the vessel and its cargo; and

(b) Determine that the vessel is adequately manned.

§ 401.91 Removal of obstructions.

The Corporation or the Authority may take such action at the owner's expense as it deems necessary to move any vessel, cargo or thing that, in its opinion, obstructs or hinders transit of any part of the Seaway.

§ 401.92 Wintering and lying-up.

No vessel shall winter within the Seaway or lie-up within the Seaway during the navigation season except with the written permission of the Corporation or the Authority and subject to the conditions and charges that may be imposed.

§ 401.93 Access to Seaway property.

(a) Except as authorized by an officer, no person shall load or unload goods on property of the Corporation or the Authority.

(b) Except as authorized by an officer or by the *Shore Traffic Regulations*, no person shall enter upon any land or structure of the Corporation or the Authority or swim in any Seaway canal or lock area.

§ 401.94 Keeping copy of regulations.

A copy of these regulations in this part shall be kept on board every vessel in transit.

§ 401.95 Compliance with regulations.

The master or owner of a vessel shall ensure that all requirements of these Regulations applicable to that vessel are complied with.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52380, Aug. 7, 1980]

Navigation Closing Procedures

§ 401.96 Definitions.

In § 401.97:

(a) "Closing date" means that date and time when facilities are closed to commercial vessels at the end of the navigation period;

(b) "Closing period" means a period immediately preceding the closing date;

(c) "Clearance date" means that date and time designated annually by the Authority and the Corporation by which vessels must report for final transit in the Montreal-Lake Ontario section of the Seaway. Upbound vessels must report at Cape St. Michel

and downbound vessels must report at Cape Vincent;

(d) "Montreal-Lake Ontario section of the Seaway" means that portion of the Seaway between the Port of Montreal and mid-Lake Ontario which includes traffic control sector numbers 1 through 4.

(68 Stat. 92-97, 33 U.S.C. 981-990, as amended and sec. 104, P.L. 95-474, sec. 2, 92 Stat. 1472; 68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[44 FR 33403, June 11, 1979. Redesignated and amended at 45 FR 52380, Aug. 7, 1980]

§ 401.97 Closing procedures.

During the closing period prior to the closing date, the following procedures shall be followed by and be applicable to all vessels transiting the Montreal-Lake Ontario section of the Seaway:

(a) A clearance date will be jointly designated annually by the Authority and the Corporation for the Montreal-Lake Ontario section of the Seaway. This clearance date will specify the date and time that both upbound and downbound vessels must have reported at the designated call-in points set forth in paragraph (d) of this section.

(b) Each vessel, upon entering the Montreal-Lake Ontario section of the Seaway or departing upbound from a port, dock, wharf or anchorage in this section of the Seaway, will report to the appropriate vessel traffic control center the furthermost destination of its voyage along with all intermediate destinations within the Montreal-Lake Ontario section of the Seaway. Each vessel will immediately advise the nearest vessel traffic control center of any change in the reported destinations. The date to commence reporting will be annually designated by the Authority and the Corporation.

(c) No upbound vessels will transit the Montreal-Lake Ontario section of the Seaway after a date designated annually prior to the clearance date if its final upbound destination is further upbound than Port Colborne unless it offers assurances satisfactory to both the Authority and the Corporation that it will not present itself for downbound transit through the Montreal-Lake Ontario section of the Seaway during the remainder of the navigation period.

(d) Upbound vessels which have reported at Cape St. Michel by the clearance date and downbound vessels which have reported at Cape Vincent by the clearance date will be cleared through the system, operational conditions permitting.

(e)(1) Vessels which have not reported at the call-in points designated above by the clearance date may be allowed to transit if, in the judgment of the Authority and the Corporation, such transits can be permitted. Each vessel which is permitted such post-clearance date transit will pay an operational surcharge as follows:

(i) Vessels reporting during the 24 hour period immediately following the clearance date: $20,000

(ii) Vessels reporting more than 24 hours late, but less than 48 hours after the clearance date: $40,000

(iii) Vessels reporting more than 48 hours late, but less than 72 hours after the clearance date: $60,000

(iv) Vessels reporting more than 72 hours late: $80,000

(2) Assessed operational surcharges will be prorated on a per lock basis. Surcharges representing transit through U.S. locks will be for the account of the Corporation and payable in U.S. funds and surcharges representing transit through Canadian locks will be for the account of the Authority and payable in Canadian funds.

(3) Vessels which are allowed either upbound or downbound transit privileges in the Montreal-Lake Ontario section of the Seaway after the clearance date must furnish the applicable surcharge before being accepted for such transit. If a vessel is accepted for post-clearance date transit, the applicable surcharge will be calculated from the clearance date to the time the vessel is accepted for such transit.

(f) Because of the unique ice conditions frequently encountered in the St. Lambert-Iroquois segment of the Montreal-Lake Ontario section of the Seaway, minimum vessel power and draft requirements will be in effect during the closing period. The effective date and the requirements will be announced as early as practical but in

no case later than 30 days prior to the beginning of the closing period. However, should conditions warrant, further restrictions may be imposed upon 24 hours notice.

(g) The provisions in paragraphs (a) through (f) of this section will not be adjusted or waived except as a result of extreme circumstances over which the Seaway entities have no control and which could not have reasonably been foreseen at the time applicable dates were established. Inclement weather, pilotage delays and vessels queues which occur at the end of the navigation period do not meet the requirements of this section. In any event, adjustments will not be made on a vessel-by-vessel basis.

(68 Stat. 92-97, 33 U.S.C. 981-990, as amended and sec. 104, P.L. 95-474, sec. 2, 92 Stat. 1472; 68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[44 FR 33404, June 11, 1979. Redesignated at 45 FR 52380, Aug. 7, 1980]

Schedule I—Vessels Transiting U.S. Waters

No vessel of 1600 gross tons or more shall transit the U.S. waters of the St. Lawrence Seaway unless it is equipped with the following maneuvering data and equipment:

(a) Charts of the Seaway that are currently corrected and of large enough scale and sufficient detail to enable safe navigation. These may be published by a foreign government if the charts contain similar information to those published by the U.S. Government.

(b) U.S. Coast Guard Light List, currently corrected.

(c) Current Seaway Notices Affecting Navigation.

(d) The following maneuvering data prominently displayed on a fact sheet in the wheelhouse:

(1) For full and half speed, a turning circle diagram to port and starboard that shows the time and distance of advance and transfer required to alter the course 90 degrees with maximum rudder angle and constant power settings:

(2) The time and distance to stop the vessel from full and half speed while maintaining approximately the initial heading with minimum application of rudder;

(3) For each vessel with a fixed propeller, a table of shaft revolutions per minute, for a representative range of speeds;

(4) For each vessel that is fitted with an auxiliary propeller, a table of control settings for a representative range of speeds;

(5) For each vessel that is fitted with an auxiliary device to assist in maneuvering, such as a bow thruster, a table of vessel speeds at which the auxiliary device is effective in maneuvering the vessel;

(6) The maneuvering information for the normal load and normal ballast condition for:

(A) Calm weather—wind 10 knots or less, calm sea;

(B) No current;

(C) Deep water conditions—water depth twice the vessel's draft or greater; and

(D) Clean hull.

(7) At the bottom of the fact sheet, the following statement:

WARNING

The response of the (name of the vessel) may be different from the above if any of the following conditions, on which the maneuvering is based, are varied:

(a) Calm weather—wind 10 knots or less, calm sea;

(b) No current;

(c) Deep water conditions—water depth twice the vessel's draft or greater;

(d) Clean hull;

(e) Intermediate drafts or unusual trim.

(e) Illuminated magnetic compass at main steering station with compass deviation table, graph or record.

(f) Gyro-compass with illuminated gyro-repeater at main steering station.

(g) Marine radar system for surface navigation.

(h) Efficient echo sounding device.

(i) Illuminated rudder angle indicator or repeaters that are:

(1) Located in the wheelhouse;

(2) Arranged so that they can easily be read from any position on the bridge.

(j) Illuminated indicator showing the operating mode of that device when vessel is equipped with auxiliary maneuvering devices.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52380, Aug. 7, 1980]

SCHEDULE II—TABLE OF SPEEDS [1]

From	To	Maximum speed over the bottom, knots	
		Col. III	Col. IV
1. Upper Entrance South Shore Canal.	Lake St. Louis Buoy 13A	10.4 (12 mph)	10.4 (12 mph).
2. Lake St. Louis Buoy 13A	Lower Entrance Beauharnois Lock	15.5 (18 mph)	15.5 (18 mph).
3. Upper Entrance	Lake St. Francis	8.6 (10 mph upb)	8.6 (10 mph upb).
Beauharnois Lock	Buoy D3	10.4 (12 mph dnb)	10.4 (12 mph dnb).
4. Lake St. Francis	Lake St. Francis	15.5 (18 mph)	15.5 (18 mph).
Buoy D3	Buoy D49		
5. Lake St. Francis	Snell Lock	8.6 (10 mph upb)	7.7 (9 mph upb).
Buoy D49		10.4 (12 mph dnb)	10.4 (12 mph dnb).
6. Eisenhower Lock	Richards Point Light 55	11.3 (13 mph)	10.4 (12 mph).
7. Richards Point Light 55	Morrisburg Buoy 84	13.0 (15 mph)	10.4 (12 mph).
8. Morrisburg Buoy 84	Ogden Island Buoy 99	11.3 (13 mph)	10.4 (12 mph).
9. Ogden Island Buoy 99	Blind Bay ½ mile east of Buoy 162	13 (15 mph)	10.4 (12 mph).
10. Blind Bay ½ mile east of Buoy 162.	Deer Island Lt. 186	11.3 (13 mph)	10.4 (12 mph).
11. Deer Island Light 186	Bartlett Point Light 227	8.6 (10 mph upb)	7.7 (9 mph upb).
		10.4 (12 mph dnb)	10.4 (12 mph dnb).
12. Bartlett Point Light 227	Tibbetts Point	13.0 (15 mph)	10.4 (12 mph).
13. Junction of Canadian Middle Channel and Main Channel abreast of Ironsides Island.	Open waters between Wolfe and Howe Islands through the said Middle Channel.	9.5 (11 mph)	9.5 (11 mph).
14. Port Robinson	Ramey's Bend through the Welland By-pass.	7.7 (9 mph)	7.7 (9 mph).
15. All other canals		6.1 (7 mph)	6.1 (7 mph).

[1] Maximum speeds at which a vessel may travel in identified area in both normal and high water conditions are set out in this schedule. The Corporation and the Authority will, from time to time, designate the set of speed limits that is in effect.

(68 Stat 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[42 FR 27587, May 31, 1977, as amended at 43 FR 25318, June 15, 1978. Redesignated and amended at 45 FR 52380, Aug. 7, 1980; 45 FR 70864, Oct. 27, 1980]

SCHEDULE III—CALLING-IN TABLE

C.I.P. and checkpoint	Station to call	Message content
UPBOUND VESSELS		
1. C.I.P. 2—entering sector 1 (order of passing through established).	Seaway Beauharnois, channel 14.	1. Name of vessel. 2. Location. 3. Destination. 4. Drafts, fore and aft. 5. Cargo. 6. Pilot requirement—Lake Ontario. 7. Pilot Requirement—Upper Beauharnois lock (inland vessels only).
2. C.I.P. 3—order of passing through established.	....do	1. Name of vessel. 2. Location.
3. Exiting upper Beauharnois lock.	....do	1. Name of vessel. 2. Location. 3. ETA C.I.P. 7.

SCHEDULE III—CALLING-IN TABLE—Continued

C.I.P. and checkpoint	Station to call	Message content
4. C.I.P. 7—leaving sector 1.	....do	1. Name of vessel 2. Location.
5. C.I.P. 7—entering sector 2.	Seaway Eisenhower, channel 12.	1. Name of vessel. 2. Location. 3. Destination. 4. Drafts, fore and aft. 5. Cargo. 6. ETA Snell lock.
6. C.I.P. 8—order of passing through established.	....do	1. Name of vessel. 2. Location.
7. C.I.P. 8A	....do	1. Name of vessel. 2. Location.
8. Exiting Eisenhower Lock.	Seaway Eisenhower, Ch. 12.	1. Name of vessel and call sign. 2. Location. 3. ETA C.I.P. 11. 4. Confirm pilot requirement—Lake Ontario. 5. 1st U.S. port of call. 6. ETA 1st U.S. port of call.

SCHEDULE III—CALLING-IN TABLE—Continued

C.I.P. and checkpoint	Station to call	Message content
9. C.I.P. 11—leaving sector 2.	.....do.....	1. Name of vessel. 2. Location.
10. C.I.P. 11—entering sector 3.	Seaway Iroquois, channel 11.	1. Name of vessel. 2. Location.
11. C.I.P. 12—order of passing through established.	.....do.....	1. Name of vessel. 2. Location.
12. Exiting Iroquois lock.	.....do.....	1. Name of vessel. 2. Location. 3. ETA Cross Over Island.
13. Cross Over Island—leaving sector 3.	.....do.....	1. Name of vessel. 2. Location.
14. Cross Over Island—entering sector 4.	Seaway Clayton, channel 13.	1. Name of vessel. 2. Location. 3. ETA Cape Vincent or River Port.
15. Whale back Shoal—Con.	.....do.....	4. Confirm pilot requirement—Lake Ontario.
16. Wolfe Island Cut (Beauvais Point)—vessels leaving main channel.	.....do.....	1. Name of vessel. 2. Location. 3. ETA Kingston.
17. Cape Vincent.	.....do.....	1. Name of vessel. 2. Location. 3. ETA Sodus Point. 4. ETA Port Weller (C.I.P. 15) or Lake Ontario Port. 5. Pilot requirement—Port Weller.
18. Sodus Point..	Seaway Sodus, channel 13.	1. Name of vessel. 2. Location. 3. ETA mid-Lake Ontario. 4. ETA Newcastle.
19. Mid-Lake Ontario—leaving sector 4.	Seaway New castle Ch. 11.	1. Name of vessel. 2. Location.
20. Mid-Lake Ontario—entering sector 5.	.....do.....	1. Name of vessel. 2. Location.
21. Newcastle.....	.....do.....	1. Name of vessel. 2. Location 3. Updated ETA Port Weller (C.I.P. 15) or Lake Ontario Port. 4. Confirm pilot requirement—Port Weller.

SCHEDULE III—CALLING-IN TABLE—Continued

C.I.P. and checkpoint	Station to call	Message content
22. C.I.P. 15—order of passing through established.	Seaway Welland channel 14.	1. Name of vessel. 2. Location. 3. Destination. 4. Drafts, fore and aft. 5. Cargo. 6. Pilot requirement—Lake Erie.
Port Colborne piers.	.....do.....	1. Name of vessel. 2. Location. 3. ETA Long Point.
23. C.I.P. 16.....	Seaway Long Point, channel 11.	1. Name of vessel. 2. Location.
24. Long Point—leaving sector 7.	.....do.....	1. Name of vessel. 2. Location.
25.—28. [Reserved]		
DOWNBOUND VESSELS		
29. Long Point—entering sector 7.	Seaway Long Point, channel 11.	1. Name of vessel. 2. Location. 3. ETA C.I.P. 16.
30. C.I.P. 16—order of passing through established.	Seaway Welland, channel 14.	1. Name of vessel. 2. Location. 3. Destination. 4. Drafts, fore and aft. 5. Cargo. 6. Pilot requirement—Lake Ontario.
31. Exiting lock No. 1, Welland Canal.	.....do.....	1. Name of vessel 2. Location. 3. ETA Newcastle. 4. ETA Cape Vincent or Lake Ontario Port. 5. Pilot requirement—Cape Vincent.
32. C.I.P. 15.....	Seaway Newcastle Ch. 11.	1. Name of vessel. 2. Location.
33. Newcastle.....	.....do.....	1. Name of vessel. 2. Location. 3. ETA mid-Lake Ontario. 4. ETA Sodus Point.
34. Mid-Lake Ontario—leaving sector 5.	.....do.....	1. Name of vessel. 2. Location.
35. Mid-Lake Ontario—entering sector 4.	Seaway Sodus, channel 13.	1. Name of vessel. 2. Location.

SCHEDULE III—CALLING-IN TABLE—Continued

C.I.P. and checkpoint	Station to call	Message content
36. Sodus Point	....do	1. Name of vessel. 2. Location. 3. Updated ETA Cape Vincent or Lake Ontario Port. 4. Confirm River pilot requirement—Cape Vincent. 5. Drafts, fore and aft. 6. Cargo. 7. Destination.
37. Cape Vincent.	Seaway Clayton, channel 13.	1. Name of vessel 2. Location. 3. ETA Cross Over Island or river port.
38. Wolfe Island Cut (Quebec Head)—vessels entering main channel.	....do	1. Name of vessel. 2. Location. 3. ETA Cross Over Island or river port.
39. Cross Over Island—leaving sector 4.	....do	1. Name of vessel. 2. Location.
40. Cross Over Island—entering sector 3.	Seaway Iroquois, channel 11.	1. Name of vessel. 2. Location. 3. Destination. 4. Drafts, fore and aft. 5. Cargo.
41. C.I.P. 14	....do	1. Name of vessel. 2. Location.
42. C.I.P. 13—order of passing through established.	....do	1. Name of vessel. 2. Location.
43. Exiting Iroquois lock.	....do	1. Name of vessel. 2. Location. 3. ETA C.I.P. 10. 4. Harbor or river pilot requirement—St. Lambert.
44. C.I.P. 10—leaving sector 3.	....do	1. Name of vessel. 2. Location.
45. C.I.P. 10—entering sector 2.	Seaway Eisenhower, channel 12.	1. Name of vessel. 2. Location.
46. C.I.P. 9—order of passing through established.	....do	1. Name of vessel. 2. Location. 3. ETA Snell lock.
47. Exiting Snell lock.	....do	1. Name of vessel. 2. Location. 3. ETA C.I.P. 6.
48. Buoy D47, Lake St. Francis.	....do	1. Name of vessel. 2. Location. 3. Pilot requirement—Upper Beauharnois lock.

SCHEDULE III—CALLING-IN TABLE—Continued

C.I.P. and checkpoint	Station to call	Message content
49. C.I.P. 6—leaving sector 2.	....do	1. Name of Vessel. 2. Location.
50. C.I.P. 6—entering sector 1.	Seaway Beauharnois, channel 14.	1. Name of vessel. 2. Location.
51. C.I.P. 5—order of passing through established.	....do	1. Name of vessel. 2. Location.
52. [Reserved]		
53. St. Nicholas Island.	Seaway Beauharnois Ch. 14.	1. Name of Vessel. 2. Location. 3. Confirm harbor or river pilot requirement—St. Lambert. 4. Montreal Harbor Berth Number (if applicable).
54. St. Lambert lock to C.I.P. 2—leaving sector 1.	Seaway Beauharnois, Ch. 14.	1. Name of vessel. 2. Location.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 10900, Mar. 22, 1974, as amended at 39 FR 27797, Aug. 1, 1974; 40 FR 11722, Mar. 13, 1975; 40 FR 25814, June 19, 1975; 41 FR 12228, Mar. 24, 1976. Redesignated at 42 FR 27588, May 31, 1977; 43 FR 25819, June 15, 1978. Further redesignated and amended at 45 FR 52381, Aug. 7, 1980]

APPENDIX I—VESSEL DIMENSIONS

Structures are located at a number of Seaway locks which, when fully raised, overhang the lock wall at a given point, thereby limiting:

(a) The height of a vessel above the water line measured at the vessel's side; and

(b) The height of other structures that are located near the sides of the vessel, such as derricks, crosstrees, antennas, etc.

The following block diagram shows the limits beyond which a vessel's hull or superstructure cannot extend *when the vessel is alongside the lock wall.*

The limits in the block diagram are based on vessels with a maximum allowable beam of 23.16 m (76 feet). For vessels that have a beam width less than this and that have dimensions exceeding the limits of the block diagram (measured with the vessel alongside the lock wall), a special permission to

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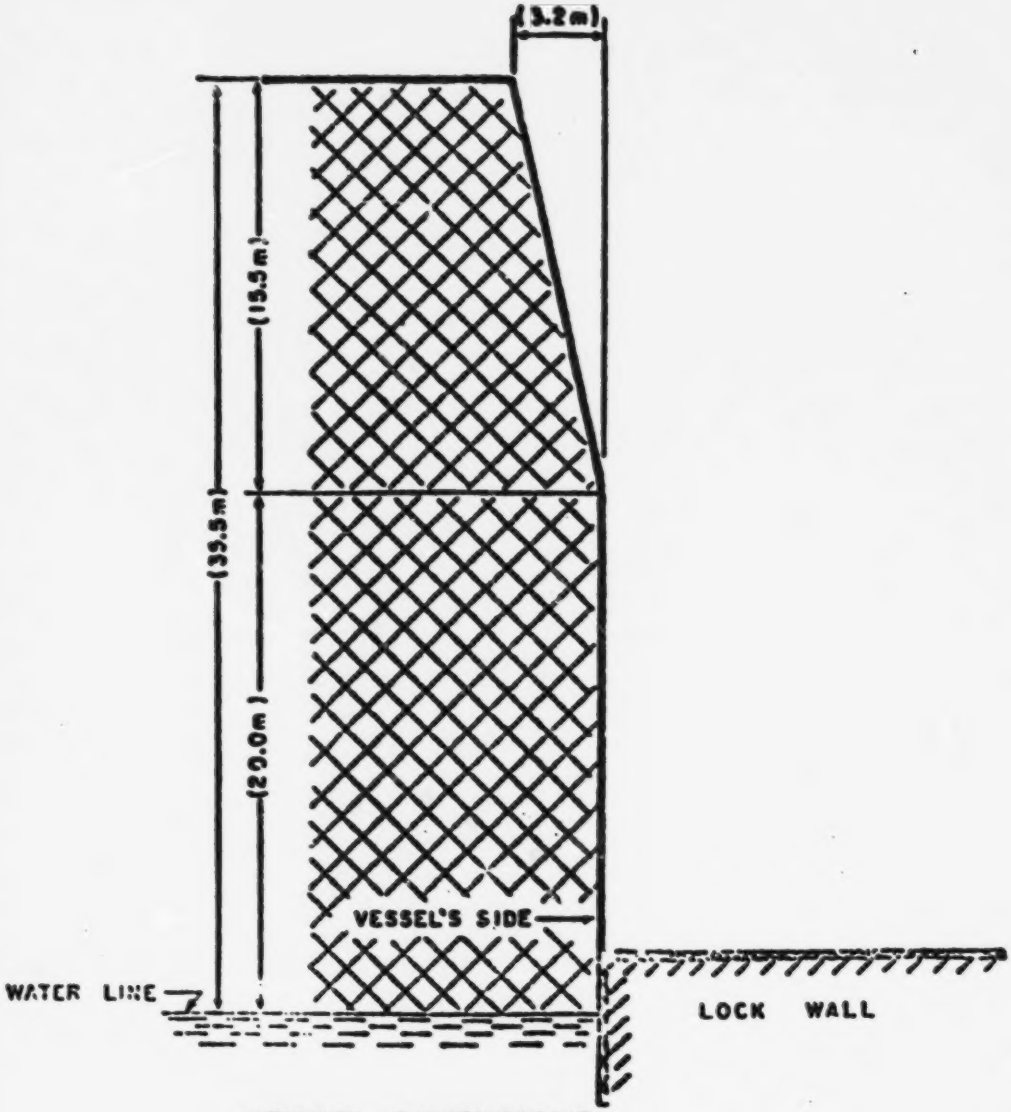
transit must be obtained. (Accurate measurements may be required before such permission is granted).

Caution: Masters must take into account the ballast draft of the vessel when verifying the maximum permissible dimensions.



VESSEL DIMENSIONS

Block Diagram

N.B. Not to scale

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and secs. 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[45 FR 52381, Aug. 7, 1980]

Subpart B—Penalties—Violations of Seaway Regulations

§ 401.101 Criminal penalty.

(a) A person who willfully and knowingly violates a regulation shall be fined not more than $50,000 for each violation or imprisoned for not more than five years, or both, and any person who, in the willful and knowing violation of this Act or any regulation issued hereunder, uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the provisions of this Act or the regulations issued hereunder, shall, in lieu of the penalties prescribed in this paragraph be fined not more than $100,000 or imprisoned for not more than ten years, or both.

(b) For the purpose of paragraph (a) of this section, a "person" is deemed to be anyone who

(1) Handles any vessel contrary to the provisions of these regulations or of any rules or directions of the Corporation, or an officer thereof, given under the regulations;

(2) Is a party to any act described in paragraph (b)(1) of this section; or

(3) Is the owner, charterer or master of any vessel by means of which any act described in paragraph (b)(1) of this section is committed.

(68 Stat. 92-97 (33 U.S.C. 931-990), as amended, secs. 106, 107, Pub. L. 92-340; 86 Stat. 424 (49 CFR 1.50a), (37 FR 21943); and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 12746, Apr. 8, 1974, as amended at 47 FR 20582, May 23, 1982]

§ 401.102 Civil penalty.

(a) A person, as described in § 401.101(b), who violates a regulation is liable to a civil penalty of not more than $25,000.

(b) In assessing or collecting any civil penalty incurred under paragraph (a) of this section, the Corporation may, in its discretion, remit, mitigate or compromise any penalty.

(c) Upon failure to collect a penalty levied under this section, the Corporation may request the United States Attorney General to commence any action for collection in any district court of the United States. A vessel by means of which a violation of a regulation is committed shall be liable in rem and may be proceeded against accordingly.

(Secs. 106 and 107 of Pub. L. 92-340 (86 Stat. 424); and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 12746, Apr. 8, 1974, as amended at 47 FR 20582, May 23, 1982]

Subpart C—Assessment, Mitigation or Remission of Penalties

AUTHORITY: Sec. 106, Pub. L. 92-340, 86 Stat. 424, unless otherwise noted.

SOURCE: 39 FR 18443, May 28, 1974, unless otherwise noted.

§ 401.201 Delegation of authority.

(a) The Secretary of Transportation, by 49 CFR 1.52(a) has delegated to the Administrator of the Saint Lawrence Seaway Development Corporation the authority vested in him under sections 4, 5, 6, 7, 8, 12 and 13 of sec. 2 of the Port and Tanker Safety Act of 1978, Pub. L. 95-474 (92 Stat. 1471), as it pertains to the operation of the Saint Lawrence Seaway.

(b) The Administrator hereby authorizes the Corporation's Resident Manager to administer this statute in accordance with the procedures set forth in this subpart.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended; and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[39 FR 18443, May 28, 1974, as amended at 47 FR 20582, May 13, 1982]

§ 401.202 Statute providing for assessment, mitigation or remission of civil penalties.

Section 13 of sec. 2 of the Port and Tanker Safety Act of 1978 authorizes the assessment and collection of a civil penalty of not more than $25,000 from anyone who violates a regulation issued under that section.

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended; and secs. 12 and 13 of sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

[47 FR 20582, May 13, 1982]

§ 401.203 Reports of violations of Seaway regulations and instituting and conducting civil penalty proceedings.

(a) Violations of Seaway regulations, Subpart A of this part, will be brought to the attention of the alleged violator at the time of detection whenever possible. When appropriate, there will be a written notification of the fact of the violation. This notification will set forth the time and nature of the violation and advise the alleged violator relative to the administrative procedure employed in processing civil penalty cases. The alleged violator will be advised that he has 15 days in which to appear before the Resident Manager or submit a written statement for consideration. The Resident Manager shall, upon expiration of the 15-day period, determine whether there has been a violation of the Seaway regulations.

(b) If the Resident Manager decides that a violation of Seaway regulations has occurred, a determination will be made as to whether to invoke no penalty at all and close the case or whether to invoke a part or full statutory penalty. In either event, a written notice of the decision shall be given to advise the violator. If a penalty is assessed, such notice will advise the violator of his right to petition for relief within 15 days or such longer period as the Resident Manager, in his discretion, may allow. The Resident Manager may mitigate the penalty or remit it in full, except as the latter action is limited to paragraph (f) of this section. The violator may, if he desires, appear in person before the Resident Manager. If the violator does not apply for relief but instead maintains that he has not committed the violation(s) charged, and the Resident Manager, upon review, concludes that invocation of the penalty was proper, no remission or mitigation action will be taken. On the other hand, should the violator petition the Resident Manager for relief without contesting the determination that a violation did, in fact, occur, relief may be granted as the circumstances may warrant.

(c) When the penalty is mitigated, such mitigation will be made conditional upon payment of the balance within 15 days of the notice or within such other longer period of time as the Resident Manager in his discretion may allow.

(d) The violator may appeal to the Administrator from the action of the Resident Manager. Any such appeal shall be submitted to the Administrator through the Resident Manager within 15 days of the date of notification by the Resident Manager, or such longer period of time as the Resident Manager, in his discretion, may allow.

(e) Should the alleged violator require additional time to present matters favorable to his case at any stage of these penalty proceedings, a request for additional time shall be addressed to the Resident Manager who will grant a reasonable extension of time where sufficient justification is shown.

(f) Under the following circumstances, the Corporation's General Counsel shall forward cases involving violations of the Seaway regulations to the United States Attorney with the recommendation that action be taken to collect the assessed statutory penalty:

(1) When, within the prescribed time, the violator does not explain the violation, appeal for mitigation or remission, or otherwise respond to written notices from the Resident Manager; or

(2) When, having responded to such inquiries, the violator fails or refuses to pay the assessed or mitigated penalty, or to appeal to the Administrator, within the time prescribed; or

(3) When the violator denies that the violation(s) was committed by him, the Resident Manager, upon review, disagrees and the violator thereafter fails to respond to the demand, appeal to the Administrator, or to remit payment of the assessed penalty within the time prescribed (see § 401.203(b)); or

(4) When the violator fails to pay within the prescribed time the penalty as determined by the Administrator after consideration of the violator's appeal from the action of the Resident Manager.

(g) If a report of boarding or on investigation report submitted by a Corporation employee or investigative body discloses evidence of violation of a Federal criminal statute, the Corpo-

ration's General Counsel, in accordance with § 401.204, shall refer the findings to the United States Attorney for appropriate action.

§ 401.204 Criminal penalties.

(a) Prosecution in the Federal courts for violations of Seaway regulations enforced by the Corporation which provide, upon conviction, for punishment by fine or imprisonment is a matter finally determined by the Department of Justice. This final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution.

(b) The Corporation's General Counsel is hereby authorized to determine whether or not a violation of a Seaway regulation carrying a criminal penalty is one which would justify referral of the case to the United States Attorney.

(c) The Corporation's General Counsel will identify the regulations which were violated and make specific recommendations concerning the proceedings to be instituted by the United States Attorney in every case.

(d) Referral of a case to the United States Attorney for prosecution terminates the Corporation's authority with respect to the criminal aspects of a violation.

§ 401.205 Civil and criminal penalties.

(a) If a violation of a Seaway regulation carries a criminal penalty, the Corporation's General Counsel is hereby authorized to determine whether to refer the case to the United States Attorney for prosecution in accordance with § 401.204, which outlines the appropriate procedure for handling criminal cases.

(b) The decision of the United States Attorney as to whether to institute criminal proceedings shall not bar the initiation of civil penalty proceedings by the Resident Manager.

§ 401.206 Procedure for payment of civil penalty for violation of Seaway regulation.

(a) The payment must be by money order or certified check payable to the order of the Saint Lawrence Seaway Development Corporation when mailed to the Resident Manager. If the payment is made in person at the offices of the Saint Lawrence Seaway Development Corporation, the payment may be in cash or by postal money order or check payable to the order of the Saint Lawrence Seaway Development Corporation.

(b) The payment of any penalty is acknowledged by written receipt.

(c) If the penalty paid is determined by the Resident Manager to have been improperly or excessively imposed, the payor will be notified and requested to submit an application for a refund which should be mailed to the Saint Lawrence Seaway Development Corporation, attention of the Resident Manager. Such application must be made by the payor within one year of the date of the notification provided for in this section.

(d) In the event the alleged violator is about to leave the jurisdiction of the United States, he will be required, before being allowed to depart, to post a bond in the amount and manner suitable to the Resident Manager, from which bond any subsequent assessed or mitigated penalty may be satisfied.

(68 Stat. 92-97 (33 U.S.C. 981-990, as amended), and sec. 104, Pub. L. 92-340, 86 Stat. 424; 49 CFR 1.50a (37 FR 21943))

PART 402—TARIFF OF TOLLS

Sec.
402.1 Purpose.
402.2 Title.
402.3 Interpretation.
402.4 Tolls.
402.5 Security for payment.
402.6 Description and weight of cargo.
402.7 Post-clearance date operational surcharges.
402.8 Schedule of tolls.

AUTHORITY: 68 Stat 92-96, 33 U.S.C. 981-990. Agreement between Governments of the United States and Canada dated March 9, 1959, as amended in 1964, 1967, 1972, 1978, 1980 and most recently on March 18, 1982.

SOURCE: 47 FR 13804, Apr. 1, 1982, unless otherwise noted.

§ 402.1 Purpose.

This regulation prescribes the charges to be assessed for the full or partial transit of the St. Lawrence

Seaway between Montreal, Quebec and Lake Erie.

§ 402.2 Title.

This tariff may be cited as the St. Lawrence Seaway Tariff of Tolls.

§ 402.3 Interpretation.

In this tariff.

(a) "Authority" means The St. Lawrence Seaway Authority;

(b) "Bulk cargo" means such goods as are loose or in mass and generally must be shovelled, pumped, blown, scooped or forked in the handling and, without limiting the generality of the term or otherwise affecting its meaning, shall be deemed to include:

(1) Cement, loose or in sacks;

(2) Coke and petroleum coke, loose or in sacks;

(3) Domestic package freight;

(4) Liquids carried in ships' tanks;

(5) Ores and minerals (crude, screened, sized or concentrated, but not otherwise processed) loose or in sacks, including alumina, bauxite, coal, gravel, phosphate rock, sand, stone and sulphur;

(6) Pig iron, scrap metals;

(7) Pulpwood, poles and logs, loose or bundled;

(8) Raw sugar, flour, loose or in sacks;

(9) Woodpulp, loose or in bales;

(c) "Cargo" means all goods aboard a vessel whether carried as revenue or non-revenue freight, or carried for the vessel owner, *except:* empty containers and the tare weight of loaded containers, all such containers having a capacity of 18 cubic meters (635.665 cubic feet) or more; ships' fuel, ballast or stores, or crew or passenger's personal effects, and intransit cargo that is carried both upbound and downbound in the course of the same voyage which shall be reported in the Seaway Transit Declaration Form but is deemed to be ballast and not subject to toll assessment;

(d) "Containerized cargo" means any general cargo shipped in an enclosed, permanent, reusable, nondisposable, weathertight shipping conveyance having a capacity of 18 cubic meters (635.665 cubic feet) or more and fitted with a minimum of one hinged door;

(e) "Corporation" means the Saint Lawrence Seaway Development Corporation;

(f) "Domestic package freight" means cargo, the shipment of which originates at one Canadian point and terminates at another Canadian point, or which originates at one United States point and terminates at another United States point, but shall not include any import or export cargo designated at the point of origin for transshipment by water at a point in Canada or in the United States;

(g) "Feed grains" means barley, corn, oats, flaxseed, rapeseed, soybeans and other oilseeds, grain screenings, and mill feed containing not more than 35% of ingredients other than grain or grain products;

(h) "Food grains" means buckwheat, dried beans, dried peas, rye, and wheat;

(i) "General cargo" means all goods not included in the definitions under paragraphs (b), (g), (h), and (j);

(j) "Government aid cargo" means processed food products which have been donated by or the purchase of which has been financed on concessional terms by the Federal government of either the United States or Canada for the purposes of nutrition, economic development, emergency, or disaster relief programs;

(k) "Metric ton" means, unless otherwise stated, a metric unit of weight of 1,000 kilograms (2204.62 pounds);

(l) "Passenger" means any person being transported through the Seaway who has paid a fare for passage;

(m) "Pleasure craft" means a vessel, however propelled, that is used exclusively for pleasure and does not carry passengers;

(n) "St. Lawrence Seaway" includes all facilities and services authorized under the St. Lawrence Seaway Authority Act, Chapter 242, Revised Statutes of Canada, 1952, as amended, and under Pub. L. 358, 83rd Congress, May 13, 1954, enacted by the Congress of the United States, as amended, and including the Welland Canal, which facilities are under the control and administration or immediate financial responsibility of either the Authority or the Corporation;

(o) "Seaway" means the St. Lawrence Seaway;

(p) "Tolls" means the total assessment levied against a vessel, its cargo and passengers for complete or partial transit of the Seaway covering a single trip in one direction;

(q) "Vessel" means every type of craft used as a means of transportation on water, except a vessel of or employed by the Authority or the Corporation.

§ 402.4 Tolls.

(a) The tolls shall be as set forth in the Schedule hereto, and the toll level reached in 1983 shall remain in effect thereafter until modified.

(b) The tolls under this tariff are due from the representatives of each vessel as soon as they are incurred, and upon demand of either the Authority or the Corporation payment shall be made within fourteen days of the date of such demand.

(c) The tolls for the section between Montreal and Lake Ontario shall be paid 71 percent in Canadian dollars and 29 percent in United States dollars. Payments for transit through locks in Canada only shall be in Canadian dollars, and payments for transit through locks in the United States only shall be in United States dollars.

(d) the tolls for transit of the Welland Canal shall be paid in Canadian dollars and shall accrue to the Authority.

§ 402.5 Security for payment.

A representative of each vessel shall provide the Authority or the Corporation with security, satisfactory to the Authority or the Corporation, for payment of tolls.

§ 402.6 Description and weight of cargo.

(a) A cord of pulpwood shall be deemed to weigh 1,450 kilograms (3196.70 pounds).

(b)(1) 1,000 f.b.m. of sawn softwood lumber with less than 15% moisture content shall be deemed to weigh 770 kilograms (1697.56 pounds).

(2) 1,000 f.b.m. of sawn softwood lumber with 15% moisture content or over shall be deemed to weigh 950 kilograms (2094.39 pounds).

(3) 1,000 f.b.m. of sawn hardwood lumber with less than 15% moisture content shall be deemed to weigh 1,135 kilograms (2502.24 pounds).

(4) 1,000 f.b.m. of sawn hardwood lumber with 15% moisture content or over shall be deemed to weigh 1,405 kilograms (3097.49 pounds).

(c) The tonnage used in the assessment of tolls shall be calculated to the nearest 1,000 kilograms (2204.62 pounds).

§ 402.7 Post-clearance date operational surcharges.

(a) If the Authority and the Corporation so determine, they may establish a clearance date for the transit of the Montreal-Lake Ontario section. Each vessel which does not comply with the conditions announced by the Authority and the Corporation in establishing the clearance date may be required to pay in dollars an operational surcharge as follows:

(1) Vessels reporting during the 24 hour period immediately following the clearance date: 20,000.00

(2) Vessels reporting more than 24 hours late, but less than 48 hours after the clearance date: 40,000.00

(3) Vessels reporting more than 48 hours late, but less than 72 hours after the clearance date: 60,000.00

(4) Vessels reporting more than 72 hours late, but less than 96 hours after the clearance date: 80,000.00

(b) The operational surcharge assessed vessels already at a port, dock or wharf within the St. Lambert-Iroquois Lock segment of the Montreal-Lake Ontario section at the clearance date shall be $20,000 less than the amount otherwise applicable.

(c) Each vessel which reports more than 96 hours after the clearance date may transit only if a prior written agreement authorizing such transit has been entered into among the owner or agent of the vessel and the Authority and the Corporation. Such agreement may provide for additional operational surcharges.

(d) Assessed operational surcharges will be prorated on a per lock basis. Surcharges representing transit through United States locks will be for the account of the Corporation and

payable in United States funds and surcharges representing transit through Canadian locks will be for the account of the Authority and will be payable in Canadian funds.

§ 402.8 Schedule of tolls.

	Tolls			
	Montreal to or from Lake Ontario		Lake Ontario to or from Lake Erie (Welland Canal)	
	1982	1983	1982	1983
(a) For transit of the Seaway, a composite toll, comprising:				
(1) A charge in dollars per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States)	0.075	0.08	0.07	0.07
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other document, as follows:				
—Bulk cargo	0.79	0.85	0.31	0.31
—General cargo	1.91	2.06	0.50	0.50
—Containerized cargo	0.79	0.85	0.31	0.31
—Government aid cargo	0.48	0.52	0.31	0.31
—Food grains	0.48	0.52	0.31	0.31
—Feed grains	0.48	0.52	0.31	0.31
(3) A charge in dollars per passenger per lock: A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo or passenger vessels, which may be shared by vessels in tandem	1.00	1.00	1.00	1.00
(i) Loaded: Per lock	NA	NA	150.00	250.00
(ii) In ballast: Per lock	NA	NA	75.00	187.50
(b) For partial transit of the Seaway:				
(1) Between Montreal and Lake Ontario, in either direction 15 percent per lock of the applicable toll.				
(2) Between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of the applicable toll.				
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:				
—Pleasure craft	5.00	5.00	5.00	5.00
—Other vessels	10.00	10.00	10.00	10.00

PART 403—RULES OF PROCEDURE OF THE JOINT TOLLS REVIEW BOARD

Sec.

403.1 Purpose of the Joint Tolls Review Board. (Rule 1)
403.2 Scope of rules [Rule 1].
403.3 Definitions.[Rule 2]
403.4 Applications. [Rule 3]
403.5 Meetings and functions of Board. [Rule 4]
403.6 Additional information. [Rule 5]
403.7 Action on applications; notices of requirements. [Rule 6]
403.8 Proceedings; stay or adjournment. [Rule 7]
403.9 Prehearings. [Rule 8]
403.10 Hearings; witnesses; affidavits. [Rule 9]
403.11 Findings and recommendations. [Rule 10]

AUTHORITY: 68 Stat. 92-96, 33 U.S.C. 981-990; Agreement between the Governments of United States and of Canada dated March 9, 1959, 10 U.S.T. 323, unless otherwise noted.

SOURCE: 24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959, unless otherwise noted.

§ 403.1 Purpose of the Joint Tolls Review Board. (Rule 1)

The Board shall hear complaints relating to the interpretation of the St. Lawrence Seaway Tariff of Tolls or allegations of unjust discrimination arising out of the operation of the said Tariff and shall conduct such other business as agreed to by the Board (Rule 1).

[47 FR 13805, Apr. 1, 1982]

§ 403.2 Scope of rules. [Rule 1]

These rules govern practice and procedure before the Joint Tolls Review Board unless the Board directs or per-

mits a departure therefrom in any proceeding [Rule 1].

(68 Stat. 92-97, 33 U.S.C. 981-990, as amended; Agreement between the Governments of the United States and Canada finalized on March 20, 1978)

[43 FR 30539, July 17, 1978. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.3 Definitions. [Rule 2]

In these rules, unless the context otherwise requires—

(a) "Application" includes complaint;

(b) "Affidavit" includes a written affirmation;

(c) "Board" means the Joint Tolls Review Board;

(d) Words in the singular include the plural and words in the plural include the singular [Rule 2].

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959, as amended at 43 FR 30539, July 17, 1978. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.4 Applications. [Rule 3]

(a) Every proceeding before the Board shall be commenced by an application made to it, which shall be in writing and signed by, or on behalf of, the applicant.

(b) An applicant shall file six copies of his application setting forth a clear and complete statement of the facts the grounds for the complaint, and the relief or remedy to which the applicant claims to be entitled.

(c) Applicants resident in Canada shall file their complaints with the St. Lawrence Seaway Joint Tolls Reviews Board, Tower "A", Place de Ville, 320 Queen Street, Ottawa, Ontario KIR 5A3. Applicants resident in the United States of America shall file their complaints with the St. Lawrence Seaway Joint Tolls Review Board, 800 Independence Ave., SW., Washington, D.C. 20591. Other applicants may file their complaints with the Board at either address.

(d) One copy of each application received shall be held and be available for public inspection at the offices of the Board in Ottawa, Ontario, and Massena, N.Y.

(e) The Board shall publish notice of the receipt of applications in the "Canada Gazette" and the FEDERAL REGISTER.

(f) Interested parties shall have thirty days from date of publication of notice in which to make representations or to submit briefs to the Board. [Rule 3]

(68 Stat. 92-97, 33 U.S.C. 981-990, as amended; Agreement between the Governments of the United States and Canada finalized on March 20, 1978)

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959, as amended at 43 FR 30539, July 17, 1978. Redesignated and amended at 47 FR 13805, Apr. 1, 1982]

§ 403.5 Meetings and functions of Board. [Rule 4]

(a) The Board shall meet at such time and place as the Chairman may decide.

(b) The Board may schedule hearings at such time and place as the Chairman may decide.

(c) If hearings are scheduled the Board shall so notify applicants on record by mail, and may cause notice of the time and place of hearings to be published in the "Canada Gazette" and the FEDERAL REGISTER.

(d) Three members of the Board, one of whom shall be the Chairman, shall constitute a quorum.

(e) The Chairman shall have the right to vote at meetings of the Board and in case of equal division shall also have a casting vote.

(f) The Chairman shall cause to be kept minutes of meetings and a record of proceedings at hearings. [Rule 4]

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.6 Additional information. [Rule 5]

The Board may require further information, particulars or documents from any party. [Rule 5]

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.7 Action on applications; notices of requirements. [Rule 6]

The Board may at any time require the whole or any part of an application, answers or reply to be verified by affidavit, by giving a notice to that

effect to the party from whom the affidavit is required. It the notice is not complied with, the Board may set aside the application, answer or reply or strike out any part not verified according to the notice. [Rule 6]

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.8 Proceedings; stay or adjournment. [Rule 7]

The Board may stay proceedings or any part of the proceedings as it thinks fit or may from time to time adjourn any proceedings before it. [Rule 7]

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.9 Prehearings. [Rule 8]

The Board may direct, orally or in writing, parties or their representatives to appear before the Board or a member of the Board at a specified time and place for a conference prior to or during the course of a hearing or, in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering—

(a) The simplification of issues;

(b) The procedure at the hearing;

(c) The necessity or desirability of amending the application, answer or reply for the purpose of clarification, amplification or limitation;

(d) The mutual exchange among the parties of documents and exhibits proposed to be submitted at the hearing; and

(e) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding. [Rule 8]

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.10 Hearings; witnesses; affidavits. [Rule 9]

(a) The witnesses at the hearings shall be examined viva voce, but the Board may, at any time, for sufficient reason, order that any particular facts may be proved by affidavit or that the affidavit of any witness may be read at the hearing, on such conditions as it may think reasonable, or that any witness whose attendance ought, for some sufficient reason to be dispensed with, be examined before a member of the Board. The evidence taken before a member of the Board shall be confined to the subject matter in question, and any objection to the admission of evidence shall be noted by the member and dealt with by the Board at the hearing. Such notice of the time and place of examination as is prescribed shall be given to the parties. All examinations shall be returned to the Board, and may without further proof be used in evidence, saving all just exceptions.

(b) The Board may, whenever it deems it advisable to do so, require written briefs to be submitted by the parties.

(c) The hearing, when once commenced, shall proceed, so far as in the opinion of the Board may be practicable, from day to day. [Rule 9]

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959. Redesignated at 47 FR 13805, Apr. 1, 1982]

§ 403.11 Findings and recommendations. [Rule 10]

The Board shall report its findings and recommendations in writing to The St. Lawrence Seaway Authority and the Saint Lawrence Seaway Development Corporation and shall indicate whether the recommendations represent the unanimous agreement of the members of the Board and, if not, shall indicate those items on which unanimity was not achieved. [Rule 10]

[24 FR 9307, Nov. 18, 1959; 24 FR 10445, Dec. 23, 1959. Redesignated at 47 FR 13805, Apr. 1, 1982]

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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